

11-14-2011

## State v. Jacobson Clerk's Record Dckt. 39094

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39094-2011  
Custer County Case CR-2010-316

**LAW CLERK**

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

---

**STATE OF IDAHO**

*Plaintiff / Respondent*

vs.

**BRETT J. JACOBSON**

*Defendant / Appellant*

---

**CLERK'S RECORD ON APPEAL**

*Appealed from the District Court of the Seventh Judicial District  
of the State of Idaho, in and for the County of Custer*

*Before the Honorable Dane Watkins, Jr., District Judge*

---

Lawrence G. Wasden  
Attorney General

*Attorney for Plaintiff/Respondent*

Alexander P. McLaughlin  
Attorney at Law

*Attorney for Defendant/Appellant*

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39094

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

---

STATE OF IDAHO

Plaintiff-Respondent,

**Supreme Court No. 39094**  
Custer County No. CR-2010-316

vs.

BRETT J. JACOBSON

Defendant-Appellant.

---

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in  
and for the County of Custer;

Before the Honorable Dane Watkins Jr., District Judge.

---

**Attorney for Appellant:** LAWRENCE G. WASDEN, ESQ., PO BOX 83720,  
BOISE, ID 83720-0010

**Attorney for Respondent:** ALEXANDER P. MCLAUGHLIN, ESQ., BOX 2720,  
BOISE, ID 83701-2720

IN THE SUPREME COURT OF THE STATE OF IDAHO

\*\*\*\*\*

STATE OF IDAHO	)	
	)	<b>Supreme Court No. 39094</b>
Plaintiff – Respondent,	)	
	)	Custer County No. CR-2010-316
vs.	)	
	)	
BRETT J. JACOBSON	)	
	)	
<u>Defendant – Appellant.</u>	)	

**CLERK’S RECORD ON APPEAL**

Appeal from the Seventh Judicial District of the State of Idaho, in and for the County of Custer;

Before the Honorable Dane Watkins Jr., District Judge.

---

APPEARANCES:

**Attorney for Appellant:** LAWRENCE G. WASDEN, ESQ., PO BOX 83720,  
BOISE, ID 83720-0010

**Attorney for Respondent:** ALEXANDER P. MCLAUGHLIN, ESQ., BOX 2720,  
BOISE, ID 83701-2720

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Date: 10/12/2011

Seventh Judicial District Court - Custer County

User: LAILA

Time: 01:38 PM

ROA Report

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Case: CR-2010-0000316 Current Judge: Charles L Roos

Defendant: Jacobson, Brett J

State of Idaho vs. Brett J Jacobson

Date	Code	User	Judge
6/28/2010	NCRM	LAILA	New Case Filed - Misdemeanor
	PROS	LAILA	Prosecutor assigned Paul J Fitzer Esq
	AFPC	LAILA	Affidavit Of Probable Cause
	NOTC	LAILA	Notice of Suspension 18-8002A
	HRSC	LAILA	Hearing Scheduled (Arraignment 06/28/2010 09:00 AM)
	ARRN	LAILA	Hearing result for Arraignment held on 06/28/2010 09:00 AM: Arraignment / First Appearance
	PLEA	LAILA	A Plea is Entered for Charge - NG (I18-8004 {M} Driving Under the Influence)
	PLEA	LAILA	A Plea is Entered for Charge - NG (I37-2732(C)(3) Controlled Substance-possession of)
	PLEA	LAILA	A Plea is Entered for Charge - NG (I37-2734A(1) Drug Paraphernalia-Use or Possess With Intent to Use)
	NORM	LAILA	Notice Of Rights Misdemeanor
	NOSP	LAILA	Notification Of Subsequent Penalties
	MINE	LAILA	Minute Entry
	MINE	LAILA	Minute Entry
	MINE	LAILA	Minute Entry
	ORDR	LAILA	Order for Release from Custody
	HRSC	LAILA	Hearing Scheduled (Pretrial Conference 08/09/2010 09:30 AM)
		LAILA	Notice Of Hearing
7/9/2010	APER	RUTH	Defendant: Jacobson, Brett J Appearance Alexander P McLaughlin Esq
	NOAP	RUTH	Notice Of Appearance; Entry of Not Guilty Plea; Demand for Speedy Trial; and Demand for Sworn Complaint
	MOTN	RUTH	Motion for Extension of Time for Filing Pre-trial Motions
	REQD	RUTH	Defendants Request For Discovery to Plaintiff
7/19/2010	ORDR	LAILA	Order Granting Motion for Extention of Time for Filing Pre-Trial Motions
7/23/2010	AFFD	RUTH	Affidavit of Brett J. Jacobson
	REQT	RUTH	Request for Judicial Notice
7/26/2010	HRSC	LAILA	Hearing Scheduled (Hearing Scheduled 08/09/2010 09:30 AM) Request for Judicial Notice-Telephonic-Parties must conference each other and contact the court.
		LAILA	Notice Of Hearing

Date: 10/12/2011

Seventh Judicial District Court - Custer County

User: LAILA

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ROA Report

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Case: CR-2010-0000316 Current Judge: Charles L Roos

Defendant: Jacobson, Brett J

State of Idaho vs. Brett J Jacobson

Date	Code	User		Judge
7/26/2010	NOTC	LAILA	Notice of Service of Discovery Responses	Charles L Roos
8/2/2010	CRCO	LAILA	Criminal Complaint	Charles L Roos
	SMIS	LAILA	Summons Issued Jacobson, Brett J	Charles L Roos
	HRSC	LAILA	Hearing Scheduled (Arraignment 08/16/2010 09:00 AM)	Charles L Roos
	OBJE	LAILA	State of Idaho's Objection to the Affidavit of Brett J. Jacobson and Request for Judicial Notice	Charles L Roos
8/4/2010	NOSV	LAILA	Notice Of Service Of Supplemental Discovery Responses	Charles L Roos
	NOSV	LAILA	Notice Of Service Of Discovery Requests	Charles L Roos
8/6/2010	REPL	LAILA	Reply to State of Idaho's Objection to the Affidavit of Brett J. Jacobson and Request for Judicial Notice	Charles L Roos
8/9/2010	HRHD	LAILA	Hearing result for Hearing Scheduled held on 08/09/2010 09:30 AM: Hearing Held Request for Judicial Notice-Telephonic-Parties must conference each other and contact the court.	Charles L Roos
	HRHD	LAILA	Hearing result for Pretrial Conference held on 08/09/2010 09:30 AM: Hearing Held	Charles L Roos
8/13/2010	ACSV	LAILA	Acceptance Of Service	Charles L Roos
	NOTC	LAILA	Notice of Service of Plaintiff's Second Supplemental Response to Defendant's Discovery Requests	Charles L Roos
	REQD	LAILA	Defendant's Second Request for Discovery to Plaintiff	Charles L Roos
	SMRT	LAILA	Summons Returned Jacobson, Brett J	Charles L Roos
	HRSC	LAILA	Hearing Scheduled (Jury Trial 01/14/2011 09:00 AM)	Charles L Roos
	NOHR	LAILA	Notice Of Hearing	Charles L Roos
	JPTO	LAILA	Jury Pretrial Order	Charles L Roos
	NOAP	LAILA	Notice Of Appearance; Entry Of Not Guilty Plea; Demand For Speedy Jury Trial; And Demand For Sworn Complaint	Charles L Roos
8/19/2010	NOSV	LAILA	Notice Of Service Of The State Of Idaho's Responses To Defendant's Second Request For Discovery	Charles L Roos
8/20/2010		RUTH	Affidavit and Notice of Failure to Pay - Overdue - Step 1, Failure to Pay Fines and Fees - Charge # 1, Driving Under the Influence Appearance date: 9/3/2010	Charles L Roos
8/23/2010	MOSP	LAILA	Motion To Suppress	Charles L Roos
	AFFD	LAILA	Affidavit of Brett J. Jacobson in Support of Motion to Suppress	Charles L Roos
	MEMO	LAILA	Memorandum in Support of Motion to Suppress	Charles L Roos

State of Idaho vs. Brett J Jacobson

Date	Code	User	Judge
8/23/2010	HRSC	LAILA	Hearing Scheduled (Motion to Suppress 10/04/2010 01:15 PM)
		LAILA	Notice Of Hearing
9/1/2010	RSPN	LAILA	State of Idaho's Response to Defendant's Motion to Suppress and Objection to the Affidavit of Brett Jacobson in Support of Motion to Suppress
9/7/2010	MOSP	LAILA	Second Motion To Suppress
9/8/2010	HRSC	LAILA	Hearing Scheduled (Motion to Suppress 10/04/2010 01:15 PM) 2nd Motion to Suppress
		LAILA	Notice Of Hearing
9/15/2010	RESP	LAILA	Defendant's Responses to Plaintiff's First Discovery Requests to Defendant
9/24/2010	ORDR	LAILA	Order Setting Aside Finding of Guilt
10/4/2010	CMIN	LAILA	Court Minutes Hearing type: Motion to Suppress Hearing date: 10/4/2010 Time: 1:40 pm Courtroom: Court reporter: Minutes Clerk: Plummer Laila Tape Number: Defense Attorney: Alexander McLaughlin Prosecutor: Paul Fitzer
	SUPP	LAILA	Defendant's Supplemental Response To Plaintiff's First Discovery Requests To Defendant
	HRHD	LAILA	Hearing result for Motion to Suppress held on 10/04/2010 01:15 PM: Motion Withdrawn
	DENY	LAILA	Hearing result for Motion to Suppress held on 10/04/2010 01:15 PM: Motion Denied 2nd Motion to Suppress
	ORDR	LAILA	Order
10/22/2010	DOSI	LAILA	Subpoena: Document Service Issued: on 10/22/2010 to Brett J Jacobson; Assigned to . Service Fee of \$0.00. Abby Siebert
	DOSI	LAILA	Subpoena: Document Service Issued: on 10/22/2010 to Brett J Jacobson; Assigned to . Service Fee of \$0.00. Jenna Schweizer
	DOSI	LAILA	Subpoena: Document Service Issued: on 10/22/2010 to Brett J Jacobson; Assigned to . Service Fee of \$0.00. Senior Trooper Ken Beckner
11/12/2010	NOSV	LAILA	Notice Of Service of Plaintiff's First Supplemental Discovery Requests
11/22/2010	DOSS	LAILA	Subpoena: Document Returned Served on 11/16/2010 to Brett J Jacobson; Assigned to . Service Fee of \$0.00. Jenna Schweizer

Date: 10/12/2011

Seventh Judicial District Court - Custer County

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ROA Report

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Case: CR-2010-0000316 Current Judge: Charles L Roos

Defendant: Jacobson, Brett J

State of Idaho vs. Brett J Jacobson

Date	Code	User	Judge
12/17/2010	DOSI	LAILA	Subpoena: Document Service Issued: on 12/17/2010 to Brett J Jacobson; Assigned to . Service Fee of \$0.00. Shannon Fowler
1/4/2011	MDIS	LAILA	Motion To Dismiss
	MEMO	LAILA	Memorandum in Support of Motion to Dismiss
	AFFD	LAILA	Affidavit of Alexander P. McLaughlin in Support of Motion to Dismiss
	JRYI	LAILA	State of Idaho's [Proposed] Jury Instructions
1/6/2011	JRYI	LAILA	Defendant's Proposed Jury Instructions Numbered 1-23
1/7/2011	ORDR	RUTH	Order of Dismissal - by the Court
	DSBT	RUTH	Hearing result for Jury Trial held on 01/14/2011 09:00 AM: Dismissed Before Trial Or Hearing
	ORDS	RUTH	Order Of Dismissal (I18-8004 {M} Driving Under the Influence)
	ORDS	RUTH	Order Of Dismissal (I37-2732(C)(3) Controlled Substance-possession of)
	ORDS	RUTH	Order Of Dismissal (I37-2734A(1) Drug Paraphernalia-Use or Possess With Intent to Use)
	STAT	RUTH	STATUS CHANGED: closed pending clerk action
1/10/2011	DOSN	LAILA	Subpoena: Document Returned Not Served on 1/10/2011 to Brett J Jacobson; Assigned to . Service Fee of \$0.00.
	DOSN	LAILA	Subpoena: Document Returned Not Served on 1/10/2011 to Brett J Jacobson; Assigned to . Service Fee of \$0.00.
	DOSN	LAILA	Subpoena: Document Returned Not Served on 1/10/2011 to Brett J Jacobson; Assigned to . Service Fee of \$0.00.
	STAT	LAILA	STATUS CHANGED: closed
2/14/2011	NOTA	LAILA	NOTICE OF APPEAL
2/16/2011	APDC	LAILA	Appeal Filed In District Court
2/17/2011	NLT	LAILA	Notice Of Lodging Transcript On Appeal
2/22/2011	NOTC	LAILA	Notice of Lodging of Clerk's Record
4/15/2011	MOTN	LAILA	Motion to Augment the Record
4/18/2011	BREF	LAILA	Appellant's Brief
4/19/2011	ORDR	LAILA	Order Augmenting the Record on Appeal
4/25/2011	MISC	LAILA	Briefing Schedule and Notice of Time for Hearing Oral Argument
	HRSC	LAILA	Hearing Scheduled (Oral Argument 06/15/2011 01:30 PM)
4/27/2011	BREF	LAILA	Respondent's Brief
5/19/2011	BREF	LAILA	Appellant's Reply Brief

Date: 10/12/2011

Seventh Judicial District Court - Custer County

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ROA Report

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Case: CR-2010-0000316 Current Judge: Charles L Roos

Defendant: Jacobson, Brett J

State of Idaho vs. Brett J Jacobson

Date	Code	User		Judge
5/31/2011	SUBC	LAILA	Notice Of Substitution Of Counsel	Dane Watkins Jr
6/6/2011	MOTN	RUTH	Motion to Appear Telephonically	Dane Watkins Jr
6/7/2011	ORDR	LAILA	Order Granting Motion to Appear Telephonically	Dane Watkins Jr
6/9/2011	MOTN	LAILA	Motion for Telephonic Hearing	Dane Watkins Jr
6/14/2011	ORDR	RUTH	Order for Telephonic Hearing - Withroe	Dane Watkins Jr
6/15/2011	HRHD	RUTH	Hearing result for Oral Argument held on 06/15/2011 01:30 PM: Hearing Held McLaughlin - tele Withroe - tele	Dane Watkins Jr
6/16/2011	CMIN	RUTH	Court Minutes Hearing type: Oral Argument Hearing date: 6/15/2011 Time: 1:30 pm Courtroom: Court reporter: Sandra Beebe Minutes Clerk: Ruth Brunker Tape Number: Defense Attorney: Alexander McLaughlin Prosecutor: Paul Fitzer	Dane Watkins Jr
7/6/2011	MEMO	RUTH	Memorandum Decision RE: Appeal Filed in Bonneville Chambers	Dane Watkins Jr
	ORDR	RUTH	Order - Filed in Bonneville Chambers	Dane Watkins Jr
7/11/2011	CHJG	LAILA	Change Assigned Judge	Charles L Roos
	ORDR	LAILA	Order Reinstating Criminal Complaint and Notice of Jury Trial	Charles L Roos
	HRSC	LAILA	Hearing Scheduled (Jury Trial 10/07/2011 09:00 AM)	Charles L Roos
		LAILA	Jury Pretrial Order	Charles L Roos
7/15/2011	DOSI	LAILA	Subpoena: Document Service Issued: on 7/15/2011 to Brett J Jacobson; Assigned to . Service Fee of \$0.00. Senior Tropper Ken Beckner	Charles L Roos
8/12/2011	NOTA	LAILA	NOTICE OF APPEAL	Charles L Roos
	BNDC	LAILA	Bond Posted - Cash (Receipt 1030 Dated 8/12/2011 for 100.00) for Clerk's Record	Charles L Roos
8/16/2011	CCOA	LAILA	Clerk's Certificate Of Appeal	Charles L Roos
8/25/2011	STAT	RUTH	STATUS CHANGED: closed pending clerk action	Charles L Roos
8/29/2011	NOTA	LAILA	AMENDED NOTICE OF APPEAL	Charles L Roos
8/30/2011	CCOA	LAILA	Clerk's Certificate Of Appeal	Charles L Roos
	ORDR	LAILA	Order Staying Further Proceedings and Vacating Jury Trial	Charles L Roos
	HRVC	LAILA	Hearing result for Jury Trial scheduled on 10/07/2011 09:00 AM: Hearing Vacated	Charles L Roos
9/15/2011	CCOA	LAILA	Clerk's Certificate Of Appeal	Charles L Roos

Date: 10/12/2011

Seventh Judicial District Court - Custer County

User: LAILA

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ROA Report

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Case: CR-2010-0000316 Current Judge: Charles L Roos

Defendant: Jacobson, Brett J

State of Idaho vs. Brett J Jacobson

Date	Code	User		Judge
9/21/2011	MISC	LAILA	Clerk's Certificate of Exhibit's	Charles L Roos
10/12/2011	LDGD	LAILA	Transcript Lodged	Charles L Roos
	NOTC	LAILA	Notice of Lodging	Charles L Roos



IDAHO STATE POLICE

1485141  
IDAHO UNIFORM CITATIONIN THE DISTRICT COURT OF THE JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Custer  
STATE OF IDAHO

1485141

vs.  
Jacobson  
Last Name  
Brett  
First Name  
J  
Middle Initial

## COMPLAINT AND SUMMONS

☐ Infraction Citation  
OR  
☒ Misdemeanor Citation☐ Accident Involved☐ Commercial VehicleUSDOT TK CL-200-316  
☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other  
☐ GVWR 26001 + ☐ 8 + Persons ☐ Placard Hazardous Materials DR# B10002586  
Home Address 607 Woodriver Dr  
Company Name Beckner ID 83340 Phone # \_\_\_\_\_

## THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above-named defendant,

DL or SS# FA 110676A State ID Sex: ☒ M ☐ F  
Height 5'11" Wt. 175 Hair Blk Eyes Blk DOB 8/22/79  
Veh. Lic # 46645 State ID Yr. of Vehicle 04 Make Ford  
Model F150 Color WhiteDid commit the following act(s) on 6/26 2010 at 2224 o'clock P M.Vio. #1 Driving Under the influence K88004  
- .167 Insuff / .161 - Code Section

Vio. #2 \_\_\_\_\_ Code Section

Location Hwy 21/25  
Hwy 6/26/10 Date Beckner County, Idaho. Custer  
Serial #/Address 34213 Dept. ISP

Date \_\_\_\_\_ Witnessing Officer \_\_\_\_\_ Serial #/Address \_\_\_\_\_ Dept. \_\_\_\_\_

## THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT

You are hereby summoned to appear before the Clerk of the Magistrate's Division of the

District Court of Custer County Challis Idaho,

located at \_\_\_\_\_ on the \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_, (OR) on or after \_\_\_\_\_

20\_\_\_\_ and on or before Incarcerated \_\_\_\_\_, 20\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M

Defendant's Name:

I acknowledge receipt of this summons and I promise to appear at the time indicated.

Defendant's Signature In CustodyI hereby certify service upon the defendant personally on the 26 day of June, 2010Officer 643

NOTICE: See reverse side of your copy for PENALTY and COMPLIANCE instructions.

COURT COPY VIOLATION #1

IDAHO STATE POLICE

IDAHO UNIFORM CITATION

1485142

IN THE DISTRICT COURT OF THE  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OFJUDICIAL DISTRICT OF  
Custer

## COMPLAINT AND SUMMONS

- ☐ Infraction Citation  
OR  
☒ Misdemeanor Citation  
☐ Accident Involved  
☐ Commercial Vehicle

1485142

vs. Jacobson

Brett

J

First Name

Middle Initial

USDOT TX

☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other  
☐ GVWR 26001 + ☐ 8 + Persons ☐ Placard Hazardous Materials ☐ DR#  
 Home Address 609 Woodrider Dr  
 Company Name Latham, ID 83340 Phone #

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above named defendant.

DL or SS# FA110676A State ID Sex ☒ M ☐ F  
 Height 5'4" Wt 135 Hair Brun Eyes Blu DOB 8/22/79  
 Veh. Lic # 46514X State ID Yr. of Vehicle 04 Make Ford  
 Model F150 Color white  
 Did commit the following violation(s) on 6/26 2010 at 2224 o'clock P.M.

Vio. #1 Poss. of Marijuana 37-233203  
 Code Section

Vio. #2 Poss. of Paraphernalia 37-2334A  
 Code Section

Location Hwy 24/75  
 Date 6/26/10  
 Officer/Party Det. Beckner  
 Serial #/Address 3421-3  
 County, Idaho Custer  
 Dept. ISD

Date \_\_\_\_\_ Witnessing Officer \_\_\_\_\_ Serial #/Address \_\_\_\_\_ Dept. \_\_\_\_\_

THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT

You are hereby summoned to appear before the Clerk of the Magistrate's Division of the  
 District Court of Custer County Challis (Idaho,  
 located at \_\_\_\_\_ on the \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_ (OR) on or after  
 20\_\_\_\_ and on or before \_\_\_\_\_ 20\_\_\_\_  
 at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

I acknowledge receipt of this summons and I promise to appear at the time indicated.

I hereby certify service upon the defendant personally on the 26<sup>th</sup> day of June 2010

NOTICE: See reverse side of your copy for PENALTY and COMPLIANCE instructions.

COURT COPY VIOLATION #1

DR#

DISTRICT COURT  
CUSTER COUNTY  
IDAHO

IN THE DISTRICT COURT OF THE 7th JUDICIAL DISTRICT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF Custer.

2010 JUN 28 AM 6:52

THE STATE OF IDAHO,

Plaintiff

Brett Jered Jacobson  
Defendant,

DOB: [REDACTED]

SSN: [REDACTED]

OLN: [REDACTED]

STATE: ID

State of Idaho,

County of Custer

COURT CASE NO \_\_\_\_\_  
PROBABLE CAUSE AFFIDAVIT IN SUPPORT  
OF ARREST AND/OR REFUSAL TO TAKE TEST

ss

I, Senior Trooper Beckner, the undersigned, being first duly sworn on oath, depose and say that:

1. I am a peace officer employed by the IDAHO STATE POLICE.
2. The defendant was arrested on 6/26/10 at 2242 ☐ A.M. ☒ P.M., for the crime of **DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR ANY OTHER INTOXICATING SUBSTANCE PURSUANT TO SECTION 18-8004 IDAHO CODE.**

Second or more DUI offense in the last ten years? ☐ YES ☒ NO ☐ FELONY ☒ MISDEMEANOR

3. Location of Occurrence: Hwy 21/Hwy 75

4. Identified the defendant as: Brett Jered Jacobson by:

☒ Driver's License ☐ State ID Card ☐ Military ID ☐ Student ID Card  
☐ Credit Cards ☐ Paperwork Found ☐ Verbal ID by Defendant

Witness: identified defendant.

Other:

5. Actual physical control established by:

☒ Observation by Affiant ☐ Observation by Officer  
☐ Admission of Defendant to ☐ Statement of Witness:  
☐ Other:

DR#

6. I believe that there is probable cause to believe the defendant committed such crime because of the following facts: On 6/26/10 at approximately 2224, I, Senior Trooper Beckner, stopped a white Ford F150 near the intersection of Hwy 21 and Hwy 75 in Custer County, Idaho. The reason for the stop was a stop sign violation. I contacted the driver and detected the odor of alcoholic beverage coming from the Ford. The driver admitted to consuming a beer. His eyes were reddish and glassy. He was slightly slurring/stuttering his words. The driver identified himself by his Idaho driver's license as Brett Jered JACOBSON. I had him exit the Ford for field sobriety tests. JACOBSON failed the Horizontal Gaze Nystagmus, the Walk and Turn, and the One Leg Stand. I placed JACOBSON under arrest for Driving Under the Influence (DUI). I played the ALS audio CD for JACOBSON in my vehicle and waited the required fifteen minutes. I administered the Lifeloc FC 20 breath test to JACOBSON. The results were .167/Insuff/.161. While performing an inventory of the Ford, I found in the center console a small glass jar with a green leafy substance in it. From my training and experience, I determined this to be marijuana. There was also a pipe in the center console as well as Zig Zag rolling papers. I transported JACOBSON to the Custer County Jail. I booked JACOBSON into the jail on the charge of DUI, Possession of Marijuana, and Possession of Paraphernalia.

#### DUI NOTES

Odor of Alcoholic Beverages  
Admitted drinking Alcoholic Beverages  
Slurred Speech  
Impaired Memory  
Glassy/Bloodshot Eyes  
Other:

☒ Yes ☐ No  
☒ Yes ☐ No  
☒ Yes ☐ No  
☐ Yes ☒ No  
☒ Yes ☐ No

#### SFST – Meets Decision Points?

Gaze Nystagmus ☒ Yes ☐ No  
Walk & Turn ☒ Yes ☐ No  
One Leg Stand ☒ Yes ☐ No  
Crash Involved ☐ Yes ☒ No  
Injury ☐ Yes ☒ No

Drugs Suspected ☐ Yes ☒ No  
Reason Drugs are Suspected:

Drug Recognition Evaluation Performed ☐ Yes ☒ No

Prior to being offered the test, the defendant was substantially informed of the consequences of refusal and failure of the test as required by Section 18-8002 & 18-8002A, Idaho Code.

☒ Defendant was tested for alcohol concentration, drugs or other intoxicating substances. The test(s) was/were performed in compliance with Sections 18-8003 & 18-8004(4), Idaho Code and the standards and methods adopted by the Idaho State Police.

BAC: .167/Insuff/.161 by:

☒ Breath Instrument Type: ☐ Intoxilyzer 5000 ☐ Alco Sensor ☒ Lifeloc FC20 SN:90203809  
☐ Blood AND/OR ☐ Urine Test Results Pending ☐ Yes ☒ No (Attached)

Name of person administering breath test: Senior Trooper Beckner

Date Certification

Expires: 11/30/10

DR#

☐ Defendant refused the test as follows:

By my signature and in the presence of a person authorized to administer Oaths in the State of Idaho, I hereby solemnly swear that the information contained in this document and attached documents that may be included herein is true and correct to the best of my information and belief.

Dated: 6/27/10

Signed

(Affiant)

Subscribed and sworn before me on 6/27/10  
(Date)

REBECCA DOMAN LARSEN  
NOTARY PUBLIC  
STATE OF IDAHO

PERSON AUTHORIZED TO  
ADMINISTER OATHS

Title:

OR

Rebecca Doman Larsen  
NOTARY PUBLIC FOR IDAHO

Residing at:

My Commission Expires:

Salmon, Idaho  
11/12/2014

## SOLUTION LOG

INSTRUMENT SERIAL # 90203809

LOT NUMBER: 9802

LOCATION: R 3

[illegible]

REBECCA DOMAN LARSEN  
NOTARY PUBLIC  
STATE OF IDAHO

~~CERTIFIED COPY~~

6/27/10  
Date

Residing at Salmon, Idaho



**NOTICE OF SUSPENSION** for Failure of Evidentiary Testing  
(Penalty for Sections 18-8002 and 18-8002A, Idaho Code)

DR # B10002

Issued To:

Jacobson, Brett Terel  
Last Name First Middle  
607 Woodraker Dr  
Mailing Address  
Ketchum ID 83340  
City State Zip

Custer  
County of Arrest  
EA110676A  
Driver's License Number  
1485141  
Citation #  
Date of Arrest  
Time of Arrest  
State  
License Class  
Operating Commercial Vehicle? Yes  
Transporting Hazardous Material? Yes  
2010 JUN 28 AM 8:59

**SUSPENSION ADVISORY**

- I have reasonable grounds to believe that you were driving or were in physical control of a motor vehicle while under the influence of alcohol, drug, or other intoxicating substances. You are required by law to take one or more evidentiary tests to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in your body. After submitting to the test(s) you may, when practical, at your own expense, have additional tests made by a person of your own choosing. You do not have the right to talk to a lawyer before taking any evidentiary tests to determine the alcohol concentration or presence of drugs or other intoxicating substances in your body.
- If you refuse to take or complete any of the offered tests pursuant to Section 18-8002, Idaho Code:
  - You are subject to a civil penalty of two hundred fifty dollars (\$250).
  - Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Non-resident licenses will not be seized and will be valid in Idaho for thirty (30) days from the service of this notice of suspension unless modified or restricted by the court, provided the license is valid in the issuing state. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
  - You have a right to submit a written request within seven (7) days to the Magistrate Court of Custer County for a hearing to show cause why you refused to submit to or complete evidentiary testing and why your driver's license should not be suspended.
  - If you do not request a hearing or do not prevail at the hearing, the court will sustain the civil penalty and your license will be suspended with absolutely no driving privileges for one (1) year if this is your first refusal; and two (2) years if this is your second refusal within ten (10) years.
- If you take and fail the evidentiary test(s) pursuant to Section 18-8002A, Idaho Code:
  - Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Non-resident licenses will not be seized and shall be valid in Idaho for thirty (30) days from the service of this notice of suspension, provided the license is valid in the issuing state. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
  - I will serve you with this **NOTICE OF SUSPENSION** that becomes effective thirty days from the date of service on this **NOTICE**, suspending your driver's license or privileges. If this is your first failure of an evidentiary test your driver's license or driving privileges will be suspended for ninety (90) days, with absolutely no driving privileges during the first thirty (30) days. You may request restricted driving privileges for the remaining sixty (60) days of the suspension. Restricted driving privileges will not allow you to operate a commercial motor vehicle. If this is not your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind during that period.
  - You have the right to an administrative hearing on the suspension before the **IDAHO TRANSPORTATION DEPARTMENT** to show cause why you failed the evidentiary test and why your driver's license should not be suspended. The request must be made in writing and be received by the department within seven (7) calendar days from the date of service of this **NOTICE OF SUSPENSION**. You also have the right to judicial review of the Hearing Officer's decision.
- If you become enrolled in and are a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, you shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that you have served a period of absolute suspension of driving privileges of at least forty five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by you and that you have shown proof of financial responsibility.

**THIS SUSPENSION FOR FAILURE OR REFUSAL OF THE EVIDENTIARY TEST(S) IS SEPARATE FROM ANY OTHER SUSPENSION ORDERED BY THE COURT.**

**— PLEASE REFER TO THE BACK OF THIS SUSPENSION NOTICE FOR MORE INFORMATION —**

**NOTICE OF SUSPENSION:** If you have failed the evidentiary test(s), your driving privileges are hereby suspended per #3 above, commencing thirty (30) days from the date of service of this notice. If a blood or urine test was administered, the department may serve a Notice of Suspension upon receipt of the test results.

**This Section Provides Temporary Driving Privileges.**

(If the driver was operating a commercial vehicle, this permit will not provide commercial driving privileges of any kind.)

If issued, this permit grants the same driving restrictions and privileges as those granted by the license/permit seized (except as indicated above), and shall be valid for thirty (30) days from the date you were served this Notice of Suspension for failure or refusal of the evidentiary test(s), unless it is canceled or restricted by the court.

Permit Issued? ☒ Yes ☐ No License Surrendered? ☒ Yes ☐ No  
A permit was not issued: ☐ Suspended ☐ Not in Possession ☐ Invalid ☐ Expired ☐ Issued by Another Jurisdiction ☐ Not Licensed

Signature of Temporary Licensee (If you are issued a permit, it is not valid until you sign it):

Print Name and I.D. Number of Recording Officer (PRINT)

Agency Code

X Beckner 3421

0003

Department use only: Failure: ☐ Breath ☐ Urine/Blood ☐ Refusal

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER  
MAGISTRATE DIVISION

DISTRICT COURT  
CUSTER COUNTY  
IDAHO

LAILA PLUMMEI

2010 JUN 28 AM 9:

STATE OF IDAHO, Plaintiff

Prosecutor: Paul J Fitzer Esq

Vs.

Brett J Jacobson, Defendant

Attorney: \_\_\_\_\_

MINUTE ENTRY AND ORDER

CASE NO. CR-2010-0000316

- ☐ Judge \_\_\_\_\_ found Probable Cause
- ☐ Defendant failed to appear, issue bench warrant in the amount of \$ \_\_\_\_\_
- ☒ Defendant was advised of his/her rights. ☒ Defendant completed Notification of Subsequent Penalties 1
- ☒ Defendant was advised of minimum/maximum penalties. ☐ Defendant completed a Financial Statement and Order form
- ☒ Defendant waived counsel/will obtain his/her own counsel/requested court appointed counsel. \_\_\_\_\_ was appointed.
- ☒ Defendant entered a plea of ☐ GUILTY ☒ NOT GUILTY
- ☒ Set for hearing PT CT - JT - COP - SENT - REST - DISP - MOTION - STATUS - OTHER \_\_\_\_\_
- ☒ CHARGE: Driving Under the Influence L.C. I18-8004 M Amended to: \_\_\_\_\_
- ☐ SENTENCE: ☐ CHARGE DISMISSED \_\_\_\_\_
- ☐ Court Costs \$ \_\_\_\_\_ ☐ Fine \$ \_\_\_\_\_ ☐ Suspended Fine \$ \_\_\_\_\_
- ☐ Probation Fee \$ \_\_\_\_\_ ☐ Comm Serv Ins \$ \_\_\_\_\_ ☐ TOTAL \$ \_\_\_\_\_
- ☐ May deduct cost of counseling from fine with copy of paid receipt.
- ☐ Restitution to victim \_\_\_\_\_ in the amount of \$ \_\_\_\_\_
- ☐ Jail: \_\_\_\_\_ days, with \_\_\_\_\_ days suspended (at the Court's discretion), and credit for \_\_\_\_\_ days served.
- ☐ Must attend alcohol counseling or alcohol awareness class. ☐ Must attend tobacco awareness class.
- ☐ Driver's License suspended for \_\_\_\_\_ days. Temporary with proof of insurance for: to and from work and work purposes; health; to and from alcohol counseling; probation officer and/or community service.
- ☐ On Supervised/Court Probation for \_\_\_\_\_ reporting to Aletia Straub/Court Clerk.
- ☐ \_\_\_\_\_ Hours (8 hour day) Community Service at \$10.00 per day.
- ☒ Defendant is release on his/her own recognizance. ☐ Defendant is remanded with \$ \_\_\_\_\_ bail.
- ☐ Do not violate any laws, other than traffic infractions. ☐ Notify clerk of any change in address. (within 24 hours)
- ☒ May not consume or possess alcohol. ☒ May not enter bars, taverns or liquor stores.
- ☒ Must waive rights in the United States, State of Idaho or any other State, for search and/or testing, at your expense.
- ☒ OTHER: make all court appearances

☐ Notified of \$2.00 Handling Fee.

☐ Notified of right to appeal.

Date: 6/28/10

Charles L. Roos, Magistrate



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER  
MAGISTRATE DIVISION

DISTRICT COURT  
CUSTER COUNTY  
IDAHO

STATE OF IDAHO, Plaintiff

Prosecutor: Paul J Fitzer Esq

Vs.

Brett J Jacobson, Defendant

Attorney: \_\_\_\_\_

LA PLUMMER

2010 JUN 28 AM 9:11

MINUTE ENTRY AND ORDER

CASE NO. CR-2010-0000316

- ☐ Judge \_\_\_\_\_ found Probable Cause
- ☐ Defendant failed to appear, issue bench warrant in the amount of \$ \_\_\_\_\_
- ☒ Defendant was advised of his/her rights. ☐ Defendant completed Notification of Subsequent Penalties
- ☒ Defendant was advised of minimum/maximum penalties. ☐ Defendant completed a Financial Statement and Order form
- ☒ Defendant waived counsel/will obtain his/her own counsel/requested court appointed counsel. \_\_\_\_\_ was appointed.
- ☒ Defendant entered a plea of ☐ GUILTY ☒ NOT GUILTY
- ☒ Set for hearing (PT) - CT - JT - COP - SENT - REST - DISP - MOTION - STATUS - OTHER \_\_\_\_\_
- ☒ CHARGE: Controlled Substance-possession of I.C. 137-2732(C)(3) Amended to: \_\_\_\_\_
- ☐ SENTENCE: ☐ CHARGE DISMISSED \_\_\_\_\_
- ☐ Court Costs \$ \_\_\_\_\_ ☐ Fine \$ \_\_\_\_\_ ☐ Suspended Fine \$ \_\_\_\_\_
- ☐ Probation Fee \$ \_\_\_\_\_ ☐ Comm Serv Ins \$ \_\_\_\_\_ ☐ TOTAL \$ \_\_\_\_\_
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- ☐ Must attend alcohol counseling or alcohol awareness class. ☐ Must attend tobacco awareness class.
- ☐ Driver's License suspended for \_\_\_\_\_ days. Temporary with proof of insurance for: to and from work and work purposes; health; to and from alcohol counseling; probation officer and/or community service.
- ☐ On Supervised/Court Probation for \_\_\_\_\_ reporting to Aletia Straub/Court Clerk.
- ☐ \_\_\_\_\_ Hours (8 hour day) Community Service at \$10.00 per day.
- ☐ Defendant is release on his/her own recognizance. ☐ Defendant is remanded with \$ \_\_\_\_\_ bail.
- ☐ Do not violate any laws, other than traffic infractions. ☐ Notify clerk of any change in address. (within 24 hours)
- ☐ May not consume or possess alcohol. ☐ May not enter bars, taverns or liquor stores.
- ☐ Must waive rights in the United States, State of Idaho or any other State, for search and/or testing, at your expense.
- ☐ OTHER: \_\_\_\_\_

☐ Notified of \$2.00 Handling Fee.

☐ Notified of right to appeal.

Date: 6/28/10

Charles L. Roos, Magistrate

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER  
MAGISTRATE DIVISION

DISTRICT COURT  
CUSTER COUNTY  
IDAHO  
LAILA PLUMM

STATE OF IDAHO, Plaintiff  
Vs.  
Brett J Jacobson, Defendant

Prosecutor: Paul J Fitzer Esq

Attorney: \_\_\_\_\_

2010 JUN 28 AM 9:1

MINUTE ENTRY AND ORDER

CASE NO. CR-2010-0000316

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- ☐ Defendant failed to appear, issue bench warrant in the amount of \$ \_\_\_\_\_
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- ☒ Defendant was advised of minimum/maximum penalties. ☐ Defendant completed a Financial Statement and Order form
- ☒ Defendant waived counsel/will obtain his/her own counsel/requested court appointed counsel. \_\_\_\_\_ was appointed.
- ☒ Defendant entered a plea of ☐ GUILTY ☒ NOT GUILTY
- Set for hearing PT - CT - JT - COP - SENT - REST - DISP - MOTION - STATUS - OTHER \_\_\_\_\_
- CHARGE: Drug Paraphernalia-Use or Possess With Intent to Use I.C. 137-2734A(1) Amended to: \_\_\_\_\_**
- ☐ SENTENCE: ☐ CHARGE DISMISSED \_\_\_\_\_
- ☐ Court Costs \$ \_\_\_\_\_ ☐ Fine \$ \_\_\_\_\_ ☐ Suspended Fine \$ \_\_\_\_\_
- ☐ Probation Fee \$ \_\_\_\_\_ ☐ Comm Serv Ins \$ \_\_\_\_\_ ☐ TOTAL \$ \_\_\_\_\_
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- ☐ Jail: \_\_\_\_\_ days, with \_\_\_\_\_ days suspended (at the Court's discretion), and credit for \_\_\_\_\_ days served.
- ☐ Must attend alcohol counseling or alcohol awareness class. ☐ Must attend tobacco awareness class.
- ☐ Driver's License suspended for \_\_\_\_\_ days. Temporary with proof of insurance for: to and from work and work purposes; health; to and from alcohol counseling; probation officer and/or community service.
- ☐ On Supervised/Court Probation for \_\_\_\_\_ reporting to Aletia Straub/Court Clerk.
- ☐ \_\_\_\_\_ Hours (8 hour day) Community Service at \$10.00 per day.
- ☐ Defendant is release on his/her own recognizance. ☐ Defendant is remanded with \$ \_\_\_\_\_ bail.
- ☐ Do not violate any laws, other than traffic infractions. ☐ Notify clerk of any change in address. (within 24 hours)
- ☐ May not consume or possess alcohol. ☐ May not enter bars, taverns or liquor stores.
- ☐ Must waive rights in the United States, State of Idaho or any other State, for search and/or testing, at your expense.
- ☐ OTHER: \_\_\_\_\_

☐ Notified of \$2.00 Handling Fee.

☐ Notified of right to appeal.

Date: 6/28/10

Charles L. Roos, Magistrate

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

2010 JUN 28 AM 9:

STATE OF IDAHO,

Plaintiff,

-VS-

BRETT J. JACOBSON,  
Defendant.


CASE NO. CR-2010-316

**ORDER OF RELEASE  
FROM CUSTODY**

THE COURT DOES HEREBY ORDER that the above named defendant, Brett J. Jacobson, be released on his own recognizance from the Custer County Jail with the following conditions:

1. Must make all court appearances.
2. May not consume or possess alcohol.
3. May not enter any establishment whose primary source of income is from the sale of alcoholic beverages. i.e. bars, taverns, liquor stores, etc.
4. Defendant is subject to a search/testing for the possession of alcohol. Tests are to be at the cost of the defendant.

Dated this 28<sup>th</sup> day of June, 2010.

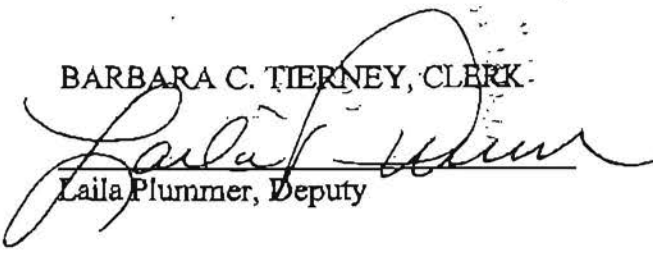
  
Charles L. Rudy  
Magistrate Judge

**CERTIFICATE OF MAILING**

On the 28<sup>th</sup> day of June, 2010, I, Laila Plummer, certify that I mailed a full and true copy of the foregoing, securely sealed in an envelope with postage prepaid to:

Shawn M. Glen, Esq., Courthouse Mailbox  
Custer County Sheriff's Office, Courthouse Mailbox  
Brett J. Jacobson, Hand delivery

BARBARA C. TIERNEY, CLERK

  
Laila Plummer, Deputy

DISTRICT COURT  
CUSTER COUNTY  
IDAHO  
RUTH BRUNKER  
2010 JUL -9 AM 11:39

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	
	)	NOTICE OF APPEARANCE; ENTRY
vs.	)	OF NOT GUILTY PLEA; DEMAND FOR
	)	SPEEDY JURY TRIAL; AND DEMAND
BRETT J. JACOBSON,	)	FOR SWORN COMPLAINT
	)	
Defendant.	)	
_____	)	

\* \* \*

COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record,

NOTICE OF APPEARANCE; ENTRY OF NOT GUILTY PLEA; DEMAND FOR SPEEDY JURY TRIAL; AND  
DEMAND FOR SWORN COMPLAINT - 1

Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and pursuant to Rule 6(d) of the Idaho Misdemeanor Criminal Rules hereby enters an appearance and plea of not guilty to each and every charge in the above-entitled matter.

Pursuant to the Sixth Amendment of the United States Constitution, Article 1, Section 13 of the Constitution of the State of Idaho, and Idaho Code, Section 19-3501, Defendant respectfully demands a speedy jury trial.

Pursuant to Rule 3(d), Idaho Misdemeanor Criminal Rules, Defendant respectfully demands that a sworn complaint be filed for each offense charged by uniform citation in the above-entitled action.

DATED this 7<sup>th</sup> day of July, 2010.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

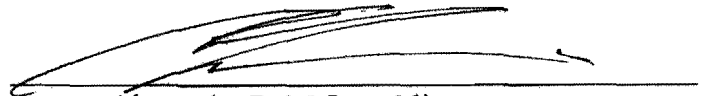
By: \_\_\_\_\_

Alexander P. McLaughlin, of the firm  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9<sup>th</sup> day of July, 2010, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702



Alexander P. McLaughlin

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR EXTENSION OF TIME
	)	FOR FILING PRE-TRIAL MOTIONS
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
_____	)	

\* \* \*


COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record,  
Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and

MOTION FOR EXTENSION OF TIME FOR FILING PRE-TRIAL MOTIONS - 1

hereby moves this Court, pursuant to Idaho Criminal Rules 1 and 12(d), for an Order extending the time for filing pre-trial motions until twenty-eight (28) days following the State's complete compliance with discovery obligations. This Motion is based on the fact that the 28-day rule of the Idaho Criminal Rules, Rule 12(d) has generally been formulated to apply in the District Court in felony cases after discovery has been fully completed in the Magistrate's Division. The requested extension of time will allow the parties time to complete discovery and thus determine whether Rule 12 motions are needed in the above-entitled action.

DATED this 3<sup>rd</sup> day of July, 2010.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

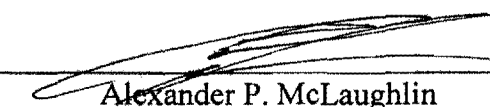
By:   
Alexander P. McLaughlin, of the firm  
Attorneys for Defendant



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7<sup>th</sup> day of July, 2010, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702



Alexander P. McLaughlin

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	
	)	ORDER GRANTING MOTION FOR
vs.	)	EXTENSION OF TIME FOR FILING
	)	PRE-TRIAL MOTIONS
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
_____	)	

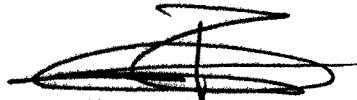
\* \* \*

THIS MATTER having come before the Court upon the Defendant's Motion For Extension  
Of Time For Filing Pre-Trial Motions and good cause appearing therefor, IT IS HEREBY

ORDER GRANTING MOTION FOR EXTENSION OF TIME FOR FILING PRE-TRIAL MOTIONS - 1

ORDERED that the time for filing pre-trial motions has been extended to twenty-eight (28) days following the filing of the State's Response to Defendant's Request for Discovery.

DATED this 19 day of July, 2010.



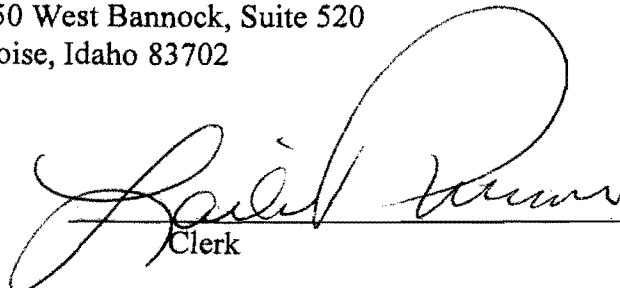
JUDGE CHARLES L. ROOS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of July, 2010, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Alexander P. McLaughlin  
Davison, Copple, Copple & Copple  
Post Office Box 1583  
Boise, Idaho 83701

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702

  
Clerk



I am the Defendant in the above captioned lawsuit. Accordingly, I have personal knowledge of the facts contained in this matter and make this Affidavit based on such personal knowledge and belief.

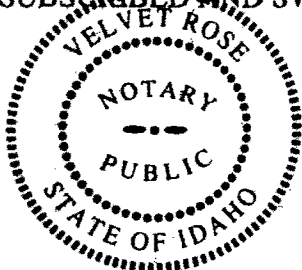
On June 26, 2010, I was at the intersection of Highway 21 and Highway 75 when an Idaho State Police squad car pulled behind me and activated its overhead emergency lights. In response thereto, I pulled my automobile over. The squad car was driven by Trooper Beckner of the Idaho State Police Department. I was later handcuffed and placed under arrest by the same officer. To my knowledge, the officer never procured a warrant for my detention or for my arrest. In any event, I was never shown a warrant throughout the duration of my contact with the officer.


Upon being placed under arrest, Trooper Beckner searched my automobile. At no time during the search of my vehicle was a warrant displayed and to my knowledge Trooper Beckner never procured a warrant for the search of my vehicle.

DATED this 21 day of July, 2010.

  
BRETT J. JACOBSON

SUBSCRIBED AND SWORN to before me this 21 day of July, 2010.



  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise, Idaho  
Commission expires: 22 June 2015

AFFIDAVIT OF BRETT J. JACOBSON - 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21<sup>st</sup> day of July, 2010, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702

  
Alexander P. McLaughlin

DISTRICT COURT  
CUSTER COUNTY  
IDAHO  
RUTH BRUNKER  
2010 JUL 23 AM 11:56

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
mclaughlin@davisoncopples.com

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	
	)	REQUEST FOR JUDICIAL NOTICE
vs.	)	
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
_____	)	

\* \* \*

COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record,  
Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and

REQUEST FOR JUDICIAL NOTICE - 1

hereby requests pursuant to Rule 201 of the Idaho Rules of Evidence ("IRE") that this Court take judicial notice of the fact that the Defendant was detained and arrested without a warrant and that his vehicle was searched also without a warrant. This Request is made on the grounds and for the reasons that no arrest or search warrant is contained in the Court's file and that no warrant was ever shown to the Defendant. This Request is made and based on the records and files herein and the Affidavit of Brett J. Jacobson, filed concurrently herewith. Defendant does not seek oral argument unless objection hereto is made by the Plaintiff, in which case, Defendant would request oral argument.

DATED this 21<sup>st</sup> day of July, 2010.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: \_\_\_\_\_


Alexander P. McLaughlin, of the firm  
Attorneys for Defendant



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21<sup>st</sup> day of July, 2010, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702

  
Alexander P. McLaughlin

DISTRICT COURT  
CUSTER COUNTY  
IDAHO  
LAILA PLUMMER  
2010 AUG -2 PM 2: 06

PAUL J. FITZER, State Bar No. 5675  
City of Stanley Prosecuting Attorney

Carl J. Withroe, State Bar No. 7051  
Loren W. Anderson, State Bar No. 7216  
MOORE SMITH BUXTON & TURCKE, CHTD.  
950 West Bannock Street, Suite 520  
Boise, ID 83702  
Tel: (208) 331-1800  
Fax: (208) 331-1202

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER  
MAGISTRATE DIVISION

STATE OF IDAHO,	)	
	)	
Plaintiff	)	Case Nos. CR-2010-316
	)	
vs.	)	
	)	CRIMINAL COMPLAINT
	)	
BRETT J. JACOBSON,	)	DOB: [REDACTED]
	)	SSN: [REDACTED]
Defendant	)	

Personally appears before me this 2<sup>nd</sup> day of Aug 2010, Carl J. Withroe, Deputy  
Prosecuting Attorney, City of Stanley, State of Idaho, and presents this complaint, pursuant to  
Idaho Criminal Rule 3 and based upon the attached sworn affidavit, that BRETT J. JACOBSON,  
did commit the following:

**COUNT I**  
**OPERATING A MOTOR VEHICLE WHILE UNDER**  
**THE INFLUENCE OF ALCOHOL**  
**Misd., I.C. 18-8004**

That the Defendant, BRETT J. JACOBSON, on or about the 26th day of June, 2010, in the County of Custer, State of Idaho, did drive and/or was in actual physical control of a motor vehicle, on a road, while under the influence of alcohol, in violation of Idaho Code Section 18-8004.

**COUNT II**  
**POSSESSION OF MARIJUANA**  
**Misd., I.C. 37-2732(c)(3)**

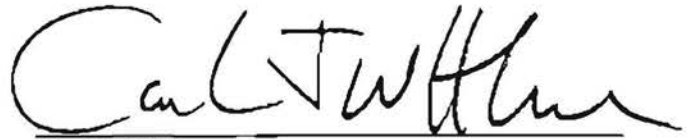
That the Defendant, BRETT J. JACOBSON, on or about the 26th day of June, 2010, in the County of Custer, State of Idaho, was in possession of a controlled substance, specifically marijuana, which is classified as a schedule II drug, in violation of Idaho Code Section 37-2732(c)(3).

**COUNT III**  
**POSSESSION OF PARAPHERNALIA**  
**Misd., I.C. 37-2734A**

That the Defendant, BRETT J. JACOBSON, on or about the 26th day of June, 2010, in the County of Custer, State of Idaho, was in possession of a drug paraphernalia, specifically a pipe and Zig Zag rolling papers, in violation of Idaho Code Section 37-2734A.

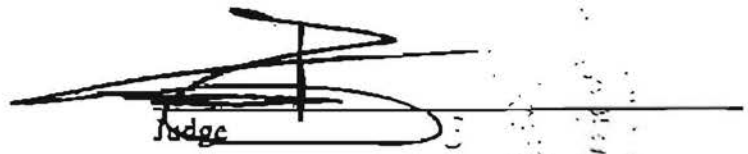
All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

Said Complainant therefore prays that a SUMMONS be issued for the said defendant,  
BRETT J. JACOBSON, and that he may be dealt with according to law.



Carl J. Withroe  
Loren W. Anderson  
City of Stanley Prosecuting Attorney

Signed before me this 2<sup>nd</sup> day of Aug, 2010.

  
Judge

Paul J. Fitzer, ISB # 5675  
CITY OF STANLEY PROSECUTING ATTORNEY

Carl J. Withroe I.S.B. # 7051  
MOORE SMITH BUXTON & TURCKE, CHARTERED  
950 West Bannock Street, Suite 520  
Boise, Idaho 83702  
Telephone: (208) 331-1800  
Facsimile: (208) 331-1202  
E-Mail: [cjw@msbtlaw.com](mailto:cjw@msbtlaw.com)

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	Case No. CR-2010-0000316
Plaintiff,	)	
	)	<b>STATE OF IDAHO'S OBJECTION</b>
v.	)	<b>TO THE AFFIDAVIT OF BRETT J.</b>
	)	<b>JACOBSON AND REQUEST FOR</b>
BRETT J. JACOBSON,	)	<b>JUDICIAL NOTICE</b>
	)	
Defendant.	)	

The State objects to the Affidavit of Brett J. Jacobson and Request for Judicial Notice,  
each dated July 21, 2010, for the following reasons:

The State does not dispute that the defendant was driving the automobile stopped by Senior Trooper Beckner, within the corporate limits of the City of Stanley, on or about June 26, 2010. However, the State objects to the Affidavit of Brett J. Jacobson and the Request for Judicial Notice because (a) each is irrelevant to the charges in this matter; (b) the State has not been given an opportunity to cross-examine the affiant, and the State will be prejudiced by the introduction

STATE OF IDAHO'S OBJECTION TO THE AFFIDAVIT OF BRETT JACOBSON AND REQUEST FOR  
JUDICIAL NOTICE - 1

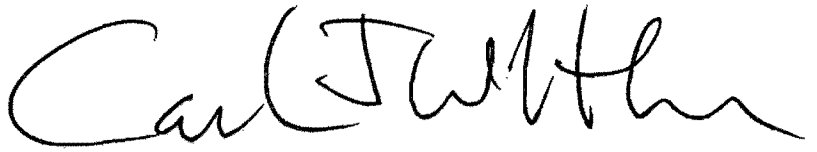
ORIGINAL

of the Affidavit and Request for Judicial Notice until the witness may be cross-examined; (c) there is no motion accompanying the Affidavit and Request for Judicial Notice (nor is any motion pending), and the State has not been apprised of the purpose for which either the Affidavit or the Request for Judicial Notice is sought to be introduced and the State will be prejudiced by the Affidavit and Request for Judicial Notice without at a minimum knowing the purpose of the testimony (in which case the State may need to elaborate on its objection); and (d) the State is not confident that the Affidavit and Request for Judicial Notice are the proper mechanism to introduce the testimony.

\* \* \*

July 29, 2010.

For the State:

A handwritten signature in black ink, appearing to read "Carl J. Withroe", written over a horizontal line.

Carl J. Withroe  
City of Stanley Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on this 29<sup>th</sup> day of July, 2010, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon.

Alexander P. McLaughlin  
Davison, Copple, Copple, & Copple, LLP  
P.O. Box 1583  
Boise, ID 83702



Carl J. Withroe

CLERK OF DISTRICT COURT  
CUSTER COUNTY  
IDAHO

LAILA PLUMMER  
2010 AUG -6 AM 11:26

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	
	)	
vs.	)	REPLY TO STATE OF IDAHO'S
	)	OBJECTION TO THE AFFIDAVIT
BRETT J. JACOBSON,	)	OF BRETT J. JACOBSON AND
	)	REQUEST FOR JUDICIAL NOTICE
Defendant.	)	
	)	

\*\*\*

REPLY TO STATE OF IDAHO'S OBJECTION TO THE AFFIDAVIT OF BRETT J. JACOBSON AND REQUEST  
FOR JUDICIAL NOTICE - 1



COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record, Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and hereby submits this Reply to the State of Idaho's Objection to the Affidavit of Brett J. Jacobson and Request for Judicial Notice ("Objection").

### I. INTRODUCTION

The memorandum at bar is a reply to the State's Objection. In its Objection, the State takes the position that Defendant's Request for Judicial Notice ("Request") should be denied. In support of the foregoing position, the State makes four (4) arguments:

- 1.) The contents of the Affidavit of Brett J. Jacobson ("Affidavit") and Request are irrelevant;
- 2.) State will be prejudiced by the introduction of the Affidavit and Request into evidence because it has not been given an opportunity to cross examine the affiant;
- 3.) There is no motion accompanying the Affidavit and Request; and
- 4.) The State is not confident that the Affidavit is the proper mechanism to introduce the testimony.

The State's arguments are legally unmeritorious. Additionally, they ascribe great significance to a request that is rather perfunctory given the fact that it is undisputed that the Defendant was subject to a warrantless search and seizure, in accordance with the facts delineated in his affidavit. In light of the foregoing and the following analysis, Defendant respectfully requests that this Court

REPLY TO STATE OF IDAHO'S OBJECTION TO THE AFFIDAVIT OF BRETT J. JACOBSON AND REQUEST FOR JUDICIAL NOTICE - 2

ADMIT the Affidavit of Brett J. Jacobson into evidence and GRANT Defendant's Request for Judicial Notice.

## II. ARGUMENT

Defendant's position is four-fold:

- 1.) Defendant's Request should be granted because the contents thereof are absolutely relevant.
- 2.) Defendant's Request should be granted because it is undisputed that the detention, arrest, and search of the Defendant were carried out without a warrant.
- 3.) Defendant's Request should be granted because Rule 201 of the Idaho Rules of Evidence ("IRE") does not require an accompanying motion.
- 4.) Defendant's Request should be granted because the State's level of confidence is not relevant to the disposition of the foregoing Request.

## III. ANALYSIS

- 1.) Defendant's Request for Judicial Notice should be granted because the contents thereof are absolutely relevant.

The State first argues that Defendant's Request should be denied because the Affidavit and Request are irrelevant. This position lacks merit. The Affidavit and Request are absolutely relevant. As intimated by Defendant's Motion for Extension of Time to File Pretrial Motions, Defendant anticipates that he will be filing several pretrial motions pursuant to Rule 12 of the Idaho Criminal Rules. Pretrial motions often implicate the reasonableness of a search and seizure. Whether a search and seizure is reasonable is in part a function of whether police conduct was carried out pursuant to a

REPLY TO STATE OF IDAHO'S OBJECTION TO THE AFFIDAVIT OF BRETT J. JACOBSON AND REQUEST FOR JUDICIAL NOTICE - 3

warrant. *See e.g. State v. Ashworth*, 148 Idaho 700, 228 P.3d 381, 383 (Ct. App. 2010) ("Warrantless searches and seizures are considered per se unreasonable unless they come within one of the few specifically established exceptions to the warrant requirement") (external citation omitted). Accordingly, the presence of a warrant is hardly irrelevant, but rather would appear to constitute the touchstone of search and seizure analysis. A request for judicial notice that a search and/or seizure was carried out without a warrant shares the same level of significance. Accordingly, the Affidavit and Request are relevant and may not be denied or stricken on the foregoing basis.

2.) Defendant's Request should be granted because it is undisputed that the detention, arrest, and search of the Defendant were carried out without a warrant.

The State also argues that Defendant's Request should be denied because the State has not been able to cross examine the affiant. This point lacks merit. It is undisputed that the Defendant was detained, arrested, and searched without a warrant. As such, it is not necessary to cross examine Mr. Jacobson regarding the foregoing. Because it is not necessary, the State is only suffering the prejudice of being unable to engage in superfluous examination. This is not true prejudice and the State should not be permitted to rely on the fact that the Defendant submitted an affidavit as a basis to avoid Defendant's Request.

3.) Defendant's Request should be granted because Rule 201 of the Idaho Rules of Evidence does not require an accompanying motion.

The State argues that Defendant's Request should be denied because it is not accompanied by any motion. This argument lacks merit. IRE 201 does not require any accompanying motion.

REPLY TO STATE OF IDAHO'S OBJECTION TO THE AFFIDAVIT OF BRETT J. JACOBSON AND REQUEST FOR JUDICIAL NOTICE - 4

Accordingly, the State would appear to be arguing that the Request should be denied because the Defendant has failed to comply with a rule that does not exist.

- 4.) Defendant's Request for Judicial Notice should be granted because the State's level of confidence is not relevant to the disposition of the Request for Judicial Notice.

The State argues that Defendant's Request should not be granted because it lacks confidence that the Affidavit is the appropriate mechanism by which to effectuate judicial notice. This argument lacks merit. The State's level of confidence regarding the appropriateness of the Affidavit is neither controlling, nor relevant.

#### IV. CONCLUSION

Defendant respectfully requests that this Court ADMIT the Affidavit of Brett J. Jacobson into evidence and GRANT Defendant's Request for Judicial Notice.

DATED this 3rd day of August, 2010.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

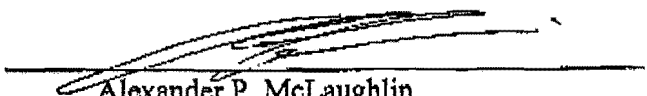
By: \_\_\_\_\_

Alexander P. McLaughlin, of the firm  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of August, 2010, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702

  
Alexander P. McLaughlin

REPLY TO STATE OF IDAHO'S OBJECTION TO THE AFFIDAVIT OF BRETT J. JACOBSON AND REQUEST  
FOR JUDICIAL NOTICE - 6

LAILA PLUMMER  
2010 AUG 13 PM 12: 04

PAUL J. FITZER, State Bar No. 5675  
City of Stanley Prosecuting Attorney

Carl J. Withroe, State Bar No. 7051  
Loren W. Anderson, State Bar No. 7216  
MOORE SMITH BUXTON & TURCKE, CHTD.  
950 West Bannock Street, Suite 520  
Boise, ID 83702  
Tel: (208) 331-1800  
Fax: (208) 331-1202

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER  
MAGISTRATE DIVISION

STATE OF IDAHO,	)	
	)	
Plaintiff	)	Case Nos. CR-2010-316
	)	
vs.	)	
	)	ACCEPTANCE OF SERVICE
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant	)	
<hr/>		
STATE OF IDAHO	)	
	)	: ss.
County of Ada	)	


ALEXANDER P. MCLAUGHLIN, being first duly sworn upon oath, deposes and says:

I am counsel for the Defendant in the above-entitled matter. On the 9<sup>th</sup> day of August, 2010, in Ada County, Idaho, I personally accepted service of the Summons and Criminal

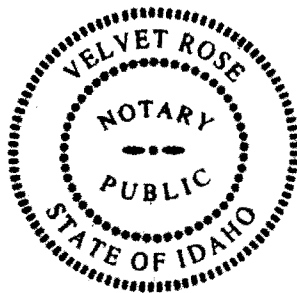
ACCEPTANCE OF SERVICE - 1

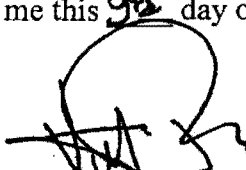
Complaint for Defendant Brett J. Jacobson, in the above-entitled matter.

DATED this 9th day of August, 2010.

  
ALEXANDER P. MCLAUGHLIN

SUBSCRIBED AND SWORN to before me this 9th day of August, 2010.



  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission expires: 02 June 2015

Seventh Judicial District Court, State of Idaho  
In and For the County of Custer  
Main Street, PO Box 385  
Challis, Idaho 83226

CLERK OF DISTRICT COURT  
IDAHO  
LARA PLUMMER

2010 AUG 13 PM 1:04

STATE OF IDAHO,  
Plaintiff.

vs.

Brett J Jacobson  
PO Box 4854  
Ketchum, ID 83340

Case No: CR-2010-0000316

NOTICE OF TRIAL

Defendant.  
DOB: [REDACTED]  
DL or SSN: [REDACTED] ID

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Jury Trial Friday, January 14, 2011 09:00 AM

Judge: Charles L Roos

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Friday, August 13, 2010.

Defendant: Brett J Jacobson  
Mailed\_XX\_ Hand Delivered\_\_\_\_\_ Hand Delivered Jail \_\_\_\_\_

Private Counsel: Alexander P McLaughlin Esq  
PO Box 1583  
Boise , ID 83701  
Mailed\_XX\_ Hand Delivered\_\_\_\_\_ Courthouse Mailbox \_\_\_\_\_

Prosecutor: Paul J Fitzer Esq  
Mailed\_XX\_ Hand Delivered\_\_\_\_\_ Courthouse Mailbox \_\_\_\_\_

Dated: Friday, August 13, 2010  
Barbara C Tierney  
Clerk Of The District Court

By: [Signature]  
Deputy Clerk

Notice Of Trial

DOC22tr 7/96



2010 AUG 13 PM 1:

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,  
Plaintiff,

Case No. CR-2010-0000316

-vs-

**PRE-TRIAL ORDER**

BRETT J JACOBSON,  
Defendant.

---

TO: The above named parties and/or their Attorney of record.

PRE-TRIAL MOTIONS

IT IS HEREBY ORDERED that pre-trial motions must be filed with the Court and proper notice thereof given to the opposing party within twenty one (21) days of trial.

JURY INSTRUCTIONS

IT IS FURTHER ORDERED that requested jury instructions must be filed with the Court, and proper notice thereof given to opposing party, at least ten (10) days (excluding weekends and holidays) before trial.

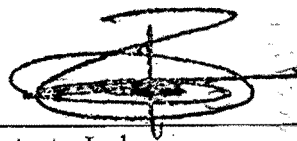
PRE-TRIAL DISCOVERY

IT IS FURTHER ORDERED that all pre-trial discovery must be completed by the parties on or before three (3) weeks of trial.

CONTINUANCES

IT IS FURTHER ORDERED that no continuance will be granted on a jury trial unless preceded by a written motion or stipulation at least seven (7) days (excluding Saturdays, Sundays and legal holidays) prior to the trial date.

DATED this date, Friday, August 13, 2010



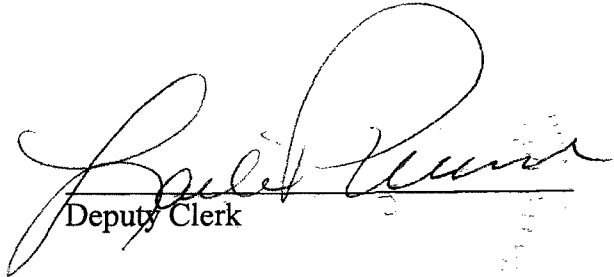
Magistrate Judge

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on 8/13/2010 a true and correct copy of the foregoing Pre-trial Order was served by the method indicated below and addressed to each of the following:

Paul J Fitzer Esq  
950 W. Bannock, Ste. 520  
Boise ID 83702

Alexander P McLaughlin Esq  
PO Box 1583  
Boise ID 83701



Deputy Clerk

208 386 9428 # 27  
DISTRICT COURT  
CUSTER COUNTY  
IDAHO  
LAILA PLUMMER  
2010 AUG 13 PM 1:23

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF APPEARANCE; ENTRY
	)	OF NOT GUILTY PLEA; DEMAND FOR
BRETT J. JACOBSON,	)	SPEEDY JURY TRIAL; AND DEMAND
	)	FOR SWORN COMPLAINT
Defendant.	)	
	)	
	)	

---

\*\*\*

COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record,

NOTICE OF APPEARANCE; ENTRY OF NOT GUILTY PLEA; DEMAND FOR SPEEDY JURY TRIAL; AND  
DEMAND FOR SWORN COMPLAINT - 1

Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and pursuant to Rule 6(d) of the Idaho Misdemeanor Criminal Rules hereby enters an appearance and plea of not guilty to each and every charge in the above-entitled matter.

Pursuant to the Sixth Amendment of the United States Constitution, Article 1, Section 13 of the Constitution of the State of Idaho, and Idaho Code, Section 19-3501, Defendant respectfully demands a speedy jury trial.

Pursuant to Rule 3(d), Idaho Misdemeanor Criminal Rules, Defendant respectfully demands that a sworn complaint be filed for each offense charged by uniform citation in the above-entitled action.

DATED this 13<sup>th</sup> day of August, 2010.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: \_\_\_\_\_

Alexander P. McLaughlin, of the firm  
Attorneys for Defendant

NOTICE OF APPEARANCE; ENTRY OF NOT GUILTY PLEA; DEMAND FOR SPEEDY JURY TRIAL; AND  
DEMAND FOR SWORN COMPLAINT - 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13<sup>th</sup> day of August, 2010, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702

  
Alexander P. McLaughlin

NOTICE OF APPEARANCE; ENTRY OF NOT GUILTY PLEA; DEMAND FOR SPEEDY JURY TRIAL; AND  
DEMAND FOR SWORN COMPLAINT - 3

2010 AUG 23 PM 3:35

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	MOTION TO SUPPRESS
	)	
vs.	)	
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
_____	)	

\* \* \*

COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record,  
Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and

MOTION TO SUPPRESS - 1

hereby moves this Court pursuant to Rule 12(b) of the Idaho Criminal Rules and the Fourteenth Amendment of the United States Constitution for an Order suppressing all breath samples provided by the Defendant as well as all testimony of the State's witnesses as to their observations of the Defendant, after his vehicle was stopped, that suggest intoxication. This Motion is based on the records and files herein, the Affidavit of Brett J. Jacobson in Support of Motion to Suppress, and Defendant's Memorandum in Support of Motion to Suppress, filed concurrently herewith. Oral argument is requested on this Motion.

DATED this 20<sup>th</sup> day of August, 2010.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: 

Alexander P. McLaughlin, of the firm  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25<sup>th</sup> day of August, 2010, I caused to be served a true and accurate copy of the foregoing instrument via facsimile to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702  
208/331-1202



---

Alexander P. McLaughlin



LAILA PLUMMER  
2010 AUG 23 PM 3:35

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	AFFIDAVIT OF BRETT J. JACOBSON
	)	IN SUPPORT OF MOTION TO
vs.	)	SUPPRESS
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
_____	)	

\* \* \*

AFFIDAVIT OF BRETT J. JACOBSON IN SUPPORT OF MOTION TO SUPPRESS - 1

STATE OF IDAHO )  
                                ss.  
County of Ada     )

BRETT J. JACOBSON, being first duly sworn upon oath, deposes and says as follows:

I am the Defendant in the above captioned matter. Accordingly, I have personal knowledge of the facts herein and make this affidavit based on such personal knowledge and belief.

1.) On or about June 26, 2010, I was pulled over in Stanley, Idaho by Trooper Beckner of the Idaho State Police Department and placed under arrest for Driving Under the Influence. I was pulled over at approximately 10:20 p.m.

2.) Thereafter, I was asked to submit two breath samples using the Lifeloc FC 20.

3.) Before submitting the foregoing samples, I specifically asked Trooper Beckner on three (3) separate occasions, if I could submit to a blood draw.

4.) Trooper Beckner unequivocally denied these requests, stating that a blood draw was completely unavailable.

5.) Thereafter, I agreed to provide breath samples. The BAC reading thereof placed me over the legal limit elucidated in I.C. § 18-8004.

6.) While in the back of Beckner's squad car, I asked for my phone. Beckner acknowledged having it, but never provided it to me for use despite the fact that if I was permitted to use it, I could have attempted to call available labs in Stanley, Challis or Salmon or

AFFIDAVIT OF BRETT J. JACOBSON IN SUPPORT OF MOTION TO SUPPRESS - 2

call a friend to at least attempt to set up a blood draw or procure alternate exculpatory evidence.

7.) For reasons which are unclear, at some point during the contact, Trooper Beckner exited the squad car and began walking along the highway, speaking with someone on his cell phone. This is despite the fact that Trooper Beckner knew that the I wanted to set up independent testing and also likely knew that in testing blood alcohol concentration, time is of the essence since BAC dissipates with time. All the while, I sat in the back seat of the squad car.

8.) Thereafter, Trooper Beckner came back to the squad car and entered into the driver's seat, sitting there for another extended period of time. Again, this was despite the fact that I had invoked my right to a blood draw and despite the known exigency of the evidence in question.

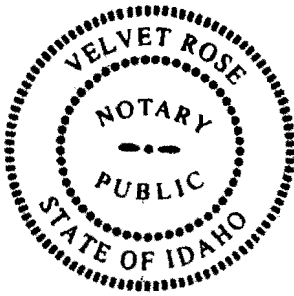
9.) Trooper Beckner then performed an inventory search of my automobile. Sometime after, another officer arrived at the scene. The two proceeded to stand adjacent to my car and have a conversation. Neither were engaged in any conduct relating to the search of my vehicle or relating to DUI investigation.


10.) Approximately two (2) hours elapsed from the time of detention to the time that Trooper Beckner even left for Challis. Trooper Beckner and I arrived at the jail at approximately 1:21 a.m. Accordingly, three (3) hours elapsed before I even arrived at the Challis jail. All the while, I was in the back seat of the squad car. Booking was complete at approximately 2:30 a.m. – four (4) hours after the initial stop and over three (3) hours after I submitted breath samples.

DATED this 20 day of August, 2010.

  
BRETT J. JACOBSON

SUBSCRIBED AND SWORN to before me this 20 day of August, 2010.



  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise, Idaho  
Commission expires: 22 June 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20<sup>th</sup> day of August, 2010, I caused to be served a true and accurate copy of the foregoing instrument via facsimile to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702  
208/331-1202



Alexander P. McLaughlin

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO SUPPRESS
vs.	)	
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
_____	)	

\* \* \*

COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record,

MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS - 1

Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and hereby submits this Memorandum in Support of Motion to Suppress.

## **I. INTRODUCTION**

The memorandum at bar is in support of the Defendant's Motion to Suppress. The disposition of the foregoing motion comes down to a narrow issue of law – in refusing to allow the Defendant Brett J. Jacobson an opportunity to procure a blood draw and in not providing the Defendant with access to a telephone for over four (4) hours, did Trooper Kenneth Beckner of the Idaho State Police Department violate the Defendant's due process rights.

Defendant's position is straightforward - any and all evidence derived from Trooper Beckner's conduct should be suppressed because:

1.) The Defendant repeatedly asked that his BAC be determined by resort to a blood draw (*State v. Hedges*, 143 Idaho 884, 887-888, 154 P.3d 1074, 1077-1078 (Ct. App. 2007)) ("Our previous case law establishes that a defendant must affirmatively assert his or her right to an independent test in order to trigger a duty on the part of the police ...");

2.) Trooper Beckner repeatedly denied the foregoing request despite the fact that once a suspect invokes his or her right to independent testing, the officer may not "deny or materially interfere with the opportunity to make timely arrangements for such testing" (*Id.*);

3.) Trooper Beckner did not provide the Defendant with access to a phone so as to

arrange such testing and thus foreclosed any chance that the Defendant had in procuring exculpatory evidence (*State v. Hedges*, CR-2004-017174-C, P. 7 (“Mr. Hedges should have been given access to a telephone ... This Court specifically finds that it was unreasonable to have Mr. Hedges sit in a holding cell for over an hour ... before he was given access to ... a telephone”); *See also State v. Carr*, 128 Idaho 181, 184, 911 P.2d 774, 777 (Ct. App. 1995) (“By denying Carr access to a telephone for approximately five (5) hours after her arrest for DUI, the State denied her the means by which she could establish her defense ... [T]he only opportunity for a defendant in a DUI case to gather exculpatory evidence is within a reasonable time following arrest and administration of the State’s BAC test”) (emphasis added)); *See also State v. Green*, --- P.3d ----, 2010 WL 2348614 (Idaho App.) at \* 4 (“We therefore held that use of a telephone must be allowed within a reasonable time following the administration of the State’s evidentiary BAC test in order to protect the arrestee’s meaningful opportunity to defend against the State’s evidence”) (citations omitted);

4.) Allowing the Defendant to use a phone would have been a minimal burden on Trooper Beckner (*Carr*, 128 Idaho at 185, 911 P.2d at 778 (“[T]he fiscal and administrative burden of allowing those who are arrested and tested for DUI to make a telephone call is minimal”));

5.) Allowing the Defendant to use a phone would have been extraordinarily beneficial as it would have allowed the Defendant to at least preserve the opportunity to defend himself against the impending charges. Defendant could have used his phone to see if a lab (Labs are located in



Stanley, Challis, and Salmon) would open up after hours or if a friend could come assist with obtaining exculpatory evidence (*Id.* at 184-185, 911 P.2d at 777-778 ("Such contact provides the means through which the arrestee is able to gather evidence tending to refute the State's evidence of intoxication and thereby preserve the 'right to a fair opportunity to defend against the State's accusations.' For example, the person contacted by the arrestee could facilitate the administration of an independent BAC test, a right guaranteed by I.C. § 18-8002(4)(d) ... As demonstrated, the interest affected in this case is substantial") (emphasis added) (citations omitted));

6.) Defendant had already submitted breath samples (*Id.*, 128 Idaho at 183, 911 P.2d at 776 ("At the outset, we note that the law is clear in Idaho that a driver does not have the right to consult with an attorney prior to submitting to, or refusing to submit to, an evidentiary BAC test .... The issue presented in this case, however, is whether Carr's constitutional rights were violated when the State denied her request to telephone her attorney following the administration of the State's BAC test")) (emphasis in original);

7.) Roughly four (4) hours elapsed from the time of detention and providing breath samples to the time of booking (*Hedges, supra* (The amount of time that lapsed was roughly three and one-half hours (3.5); *See also Carr, supra* (Five (5) hours had elapsed)));

8.) Roughly two (2) hours elapsed from the time that the Defendant was detained to the time Trooper Beckner even began to drive to Challis; and

9.) Trooper Beckner engaged in dilatory conduct after the Defendant was placed under arrest and after the Defendant had provided breath samples.

In accordance with the Court's ruling in *State v. Carr*, *State v. Madden*, and *State v. Hedges*, Trooper Beckner violated the Defendant's due process rights.

Where evidence is obtained via unconstitutional activity, the exclusionary rule bars the use of such evidence in the prosecution's case in chief. *Segura v. United States*, 468 U.S. 796, 815 (1984); *See also State v. McBaine*, 144 Idaho 130, 133, 157 P.3d 1101, 1104 (Ct. App. 2007). This includes not only evidence uncovered as a direct result of the illegal conduct, but also any evidence later discovered that is a "fruit of the poisonous tree." *State v. Fancher*, 145 Idaho 832, 839, 186 P.3d 688, 695 (Ct. App. 2008); *See also Carr*, 128 Idaho at 186, 911 P.2d at 779 ("In my view, the rationale for suppression of the BAC test is equally applicable to other evidence of Carr's intoxication that the State might present through testimony of the arresting Trooper and others regarding their observation of Carr's appearance or behavior. The evidence which Carr was prevented from preserving would be as necessary to rebut an Trooper's testimony that Carr smelled of alcohol, had slurred speech or exhibited poor balance as it would be to counter the BAC test results. Therefore, I would suppress not only evidence of the BAC test but also testimony of the State's witnesses as to their observations of Carr, after her vehicle was stopped, that suggested intoxication") (Lansing, specially concurring).

In light of the foregoing and the following analysis, Defendant respectfully requests that this Court GRANT Defendant's Motion to Suppress.

## **II. STATEMENT OF FACTS**

1.) On or about June 26, 2010, the Defendant was pulled over in Stanley, Idaho by Trooper Beckner of the Idaho State Police Department and placed under arrest for Driving Under the Influence.

2.) Thereafter, the Defendant was asked to submit two breath samples using the Lifeloc FC 20.

3.) Before submitting the foregoing samples, Defendant asked Trooper Beckner three (3) times, in no uncertain terms, if the Defendant could submit to a blood draw, stating at one point "don't I have the option of taking a blood test?"

4.) Trooper Beckner unequivocally denied these requests, stating that a blood draw was completely unavailable to the Defendant.

5.) Thereafter, the Defendant agreed to provide breath samples. The BAC reading thereof placed the Defendant over the legal limit elucidated in I.C. § 18-8004.

6.) While in the back of Beckner's squad car, Defendant asked for his phone. Beckner acknowledged having it, but never provided it to the Defendant for use despite the fact that if the Defendant was permitted to use it, he could have attempted to call available labs in Stanley, Challis

or Salmon or call a friend to at least attempt to set up a blood draw or procure alternate exculpatory evidence.

7.) For reasons which are unclear, at some point during the contact, Trooper Beckner exited the squad car and began walking along the highway, speaking with someone on his cell phone. This is despite the fact that Trooper Beckner knew that the Defendant wanted to set up independent testing and also likely knew that in testing blood alcohol concentration, time is of the essence since BAC dissipates with time. All the while, the Defendant sat in the back seat of the squad car.

8.) Thereafter, Trooper Beckner came back to the squad car and entered into the driver's seat, sitting there for another extended period of time. Again, this was despite the fact that Defendant invoked his right to a blood draw and despite the known exigency of the evidence in question.

9.) Trooper Beckner then performed an inventory search of the automobile. Sometime after, another officer arrived at the scene. The two proceeded to stand adjacent to Defendant's car and have a conversation. Neither were engaged in any conduct relating to the search of Defendant's vehicle or relating to DUI investigation.

10.) Giving the officers the benefit of the doubt, one may surmise that they were waiting for the tow truck. However, two officers are not needed for such an endeavor, especially when the Defendant had already provided breath samples, clearly indicated that he wanted independent testing,

and could have been given the opportunity to make a telephone call to someone so as to preserve some chance of establishing his innocence, which is, of course, Defendant's constitutional right. Instead, the Defendant sat in the back seat of Trooper Beckner's squad car for literally hours and hours.

11.) Given the fact that much of the time that had lapsed was spent waiting with another officer, and given the fact that the Defendant had friends nearby and that Stanley has a lab within its city limits, the Defendant should have at least been given the opportunity to set up a blood test. If no lab would allow a blood draw or if no friend would help, Defendant would have to live with the consequences. However, Defendant should have at least been given a chance at exercising his due process rights.

12.) Approximately two (2) hours elapsed from the time of detention to the time that Trooper Beckner even left for Challis. Defendant and Trooper Beckner arrived at the jail at approximately 1:21 a.m. Accordingly, three (3) hours elapsed before Defendant even arrived at the Challis jail. All the while, Defendant was in the back seat of the squad car. Booking was complete at approximately 2:30 a.m. – four (4) hours after the initial stop and over three (3) hours after the Defendant submitted breath samples.

### III. ANALYSIS

This Court should grant Defendant's Motion to Suppress because the Defendant unequivocally indicated an intent to obtain independent testing and Defendant was denied that right.

The right of a subject charged with an alcohol-related driving offense to obtain additional testing is derived from both statutory and constitutional sources. *State v. Hedges*, 143 Idaho at 886, 154 P.3d at 1076. Specifically, due process requires that police give a person accused of DUI a reasonable opportunity to procure a timely BAC sample through the accused's own efforts. *State v. Hayes*, 108 Idaho 556, 559, 700 P.2d 959, 962 (Ct. App. 1985).

Accordingly, it is of no moment that a suspect could not have actually procured an independent test - the law's focus is on whether there was a deprivation of even the opportunity to procure additional testing. This appears to be the majority rule in the United States. *See e.g. Carr, supra* ("Indeed, many states have held that due process requires that a DUI defendant be afforded a reasonable opportunity to obtain an independent blood test as such a test assures the defendant's right to gather exculpatory evidence") (emphasis added); *See also Bilbrey v. State*, 531 So.2d 27 (Ala. Crim. App. 1987); *See also McNutt v. Superior Court of State of Ariz.*, 133 Ariz. 7, 648 (1982); *See also Brown v. Municipal Court of Los Angeles*, 86 Cal.App.3d 357, 150 Cal.Rptr. 216 (1978); *See also Jones v. State*, 200 Ga. App 666, 409 S.E.2d 251, 253 (1991).

If the opportunity to procure independent testing is affirmatively denied or materially interfered with by the state, the evidence of BAC will be suppressed. *Hayes, supra*, (emphasis added) (external citations omitted); *See also State v. Madden*, 127 Idaho 894, 908 P.2d 587 (Ct. App. 1995) (citing I.C. § 18-8002(4)(d)).

MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS - 9

Operating against this backdrop is the fact that there is an inherent exigency in DUI cases due to the destruction of evidence through metabolism of alcohol in the blood. *Id.* at 896, 908 P.2d at 589. Because of this exigency, the only opportunity to obtain a meaningful, independent BAC test is within a reasonable time following arrest and administration of the state's evidentiary BAC test. *State v. Carr*, 128 Idaho at 184, 911 P.2d at 777. Accordingly, the duration of time involved in a contact is of the utmost significance, as the more time passes, the less probative is the evidence obtained through independent testing.

As to facts which implicate the denial of a meaningful opportunity for testing, the crucial factors are: A.) As stated, the amount of the lapse of time between detention and booking; B.) Whether the person was given access to a phone to at least attempt to arrange some method of exculpation; C.) The burden on the State; and D.) The private interest involved.

Regarding the issue at bar, *State v. Madden*, *State v. Carr*, and *State v. Hedges* are directly on point.

*State v. Madden* is one of the first cases in Idaho to address independent testing vis-à-vis due process. The case stands for the rule that a policy of not permitting phone calls until the booking process is complete is a violation of due process.

In *Madden*, defendant Leslie Madden ("Madden") was pulled over by Deputy Charlie Riemann and was placed under arrest for DUI. Thereafter, she was transported to the Blaine County

Sheriff's Office. Madden submitted to one breath test and then refused to provide a second. Prior to or during booking, Madden requested an independent blood test and also asked that she be able to speak with her attorney. One of the officers told her that jail policy dictated that she would have to wait until booking was complete before she could make any phone calls. Booking took 1.5 hours. Thereafter, Madden was allowed to make a phone call to her attorney, which she did. She then renewed her request for a blood test. Trooper Riemann told Madden that she could obtain a blood test after posting bond.

Madden filed a motion to suppress the BAC results. The Magistrate granted the motion, but the District Court reversed the decision. Madden appealed.

On appeal, the Court affirmed the decision of the Magistrate. According to the Court:

"Under the facts of this case, the Blaine County Sheriff Department's policy prohibiting an arrestee from making a telephone call until after the booking process [Again, 1.5 hours] denied Madden a meaningful opportunity to obtain an additional BAC test pursuant to I.C. § 18-8002(4)(d). Consequently, the results of the breath test were inadmissible and should have been suppressed."

*Id.* at 896-897, 908 P.2d at 589-590 (emphasis added).

In *State v. Carr*, the Court of Appeals reached the same conclusion on a similar issue to that presented in Madden, holding that:

"By denying Carr access to a telephone for approximately five (5) hours after her arrest for DUI, the State denied her the means by which she could establish her defense ... [T]he only opportunity for a defendant in a DUI case to gather exculpatory evidence is within a reasonable time following arrest and administration



of the State's BAC test."

*Carr*, 128 Idaho at 184, 911 P.2d at 777 (emphasis added).

In *Carr*, the defendant Ida Carr ("Carr") was arrested for Driving Under the Influence. Thereafter, Carr submitted to an evidentiary breath test. Carr was then transported to a holding cell, during which time she asked to speak to an attorney. The officer told Carr that she could "make any phone calls as soon as the jail personnel were ready to let her make the phone calls." *Carr*, 128 Idaho at 182, 911 P.2d at 775. Approximately five (5) hours after her arrest, Carr was permitted access to a telephone and she contacted a bondsmen.

Carr then filed a motion to dismiss the DUI charge. At the hearing, the magistrate considered whether suppression was the more appropriate remedy. At any rate, the motion was denied and Carr appealed. The District Court reversed the decision of the Magistrate and suppressed evidence of BAC. Thereafter, the State appealed.

On appeal, the Court affirmed the decision of the District Court. In so doing, the Court applied a traditional due process analysis, focusing on the traditional three (3) factors first elucidated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) ("(1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of such interest through the existing procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative

burdens that the additional or substitute procedural requirement would entail”).

Regarding private interest, the Court stated unequivocally that the interest involved is “substantial.” *Carr*, 128 Idaho at 184, 911 P.2d at 777. According to the Court:

“The private interest affected in this case is Carr's interest in procuring evidence which would challenge the results of the State's BAC test. By denying Carr access to a telephone for approximately five hours after her arrest for DUI, the State denied her the means by which she could establish her defense. As recognized by the Idaho Supreme Court, an ‘inherent exigency’ exists in a DUI setting, due to the destruction of the evidence by metabolism of alcohol in the blood. Therefore, the only opportunity for a defendant in a DUI case to gather exculpatory evidence is within a reasonable time following arrest and administration of the State's BAC test.”

\*\*\*

“As a result, when a person is arrested for DUI and given an evidentiary BAC test, that person must be allowed, at a minimum, to make a phone call upon request to do so. Such contact provides the means through which the arrestee is able to gather evidence tending to refute the State's evidence of intoxication and thereby preserve the ‘right to a fair opportunity to defend against the State’s accusations.’ For example, the person contacted by the arrestee could facilitate the administration of an independent BAC test.”

*Id.* at 184, 911 P.2d at 777 (emphasis added) (citations omitted).

Significantly, the Court did not limit its analysis merely to exculpatory evidence by way of blood draw. According to the Court, due process includes the opportunity to procure any and all possible exculpatory evidence. As stated:

“In addition, as noted by Carr, the person contacted by the arrestee could arrange for a photograph to be taken to demonstrate that the arrestee's eyes were not bloodshot but were clear and white; prepare a tape recording to demonstrate that the arrestee had clear speech; videotape the arrestee to show that he or she has balance and is able

to walk in a straight line; perform a gaze nystagmus test to show smooth eye pursuit at all angles; or simply serve as a witness who observed the aforementioned characteristics of sobriety. As demonstrated, the interest affected in this case is substantial.”

*Id.* at 184-185, 911 P.2d at 777-778 (emphasis added) (citations omitted).

As to the second factor, the Court noted that denying access to a telephone until well after the arrest was made causes a great risk of erroneous deprivation of the arrestee’s interest in obtaining evidence in his or her defense. The Court went on to note that the probable utility of additional or substitute procedural safeguards is also great. As stated:

“Allowing an individual arrested for DUI to make a telephone call once the State administers its evidentiary BAC test ensures that the arrestee will be given the opportunity to obtain exculpatory evidence. Indeed, without timely access to a telephone, there is little likelihood of successfully challenging the State’s evidence of intoxication.”

*Id.* at 185, 911 P.2d at 778.

As to the third factor, the specifically stated that “the fiscal and administrative burden of allowing those who are arrested and tested for DUI to make a telephone call is minimal. Thus, applying the three factors articulated in Mathews, we hold that Carr was denied her right to due process.” *Id.*

In *State v. Hedges*, the Court of Appeals addressed the same issue as in *Madden* and *Carr*, i.e, whether the due process rights of Defendant Clinton Hedges (“Hedges”) were violated.

In the case, Hedges was stopped at 1:30 a.m. and transported to the Parma police station for

a breathalyzer test. Just prior to taking the breathalyzer, Hedges asserted his intention to obtain an independent BAC test. Hedges was then arrested and transported to the Canyon County jail for booking, arriving at 2:50 a.m. Hedges again asserted his intention to obtain an independent BAC test. Hedges was ultimately released from custody at 5:00 a.m. The record indicates that a bondsman arrived within twenty (20) minutes of being contacted by Hedges, meaning that by approximately 4:30 a.m. he had completed the booking process and could phone for the services of a bail bondsman to arrange his release. Significantly, Hedges had not requested "the use of a phone, nor did he ask to arrange for an independent BAC test while he was in custody." *Hedges*, 143 Idaho at 889, 154 P.3d at 1079.

Hedges filed a motion to suppress, stating that the lapse in time between his arrest and the first time he could have used a phone, denied Hedges a reasonable and meaningful opportunity to procure independent testing. The Magistrate granted the motion and the State appealed to the District Court. The District Court reversed the order granting the motion to suppress and Hedges appealed.

On appeal, the Idaho Court of Appeals reversed the decision of the District Court, remanding the matter back to the Magistrate to determine "whether the actions of the police and jail staff during this time frame, under the totality of the circumstances, created an unreasonable delay of Hedge's release on bond such that it effectively denied or materially interfered with his right to obtain a

meaningful independent BAC test.” *Hedges*, 143 Idaho at 889, 154 P.3d at 1079.

On remand, the Honorable Frank P. Kotyk suppressed the breath samples provided by Hedges. *State v. Hedges*, Case No., CR-2004-017174-C, P. 7.1. As in *State v. Madden*, the Court focused its attention primarily on the amount of time that lapsed before Hedges was ever given access to a phone to potentially arrange an independent blood test. According to the Court:

“This court previously found that Mr. Hedges completed the BAC test at the jail with the Intoxilyzer 5000 at 3:07 a.m.; that it took twenty minutes for the bail bondsman to arrive at the jail after Mr. Hedges contacted one; and that Mr. Hedges was released on bond at 5:00 a.m. The court finds that Mr. Hedges was made to wait approximately one and one-half hours after the end of the BAC test in the jail, (3:07 a.m.), before he was given access to a telephone.”

*Id.* at 4.

Based on the foregoing information, the Court found as follows:

“Given the exigency inherent in gathering evidence in alcohol related crime, and given Trooper Slover’s acknowledgement that time is of the essence in obtaining a good alcohol test, the court finds that as soon as the BAC test was completed at 3:07 a.m. Trooper Slover should have informed the jail personnel that Mr. Hedges has requested an independent BAC test. Mr. Hedges should have been given access to a telephone ... This Court specifically finds that it was unreasonable to have Mr. Hedges sit in a holding cell for over an hour ... before he was given access to ... a telephone.

*Id.* at 7 (emphasis added).

In the present case, the Defendant was denied a reasonable and/or meaningful opportunity to obtain an independent blood draw. More than this, the evidence of this case shows that despite his

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<sup>1</sup> A courtesy copy of Judge Kotyk’s Memorandum Decision and Order is attached hereto for the Court’s convenience.

repeated invocation of his desire for additional testing, Defendant was given no chance at all at procurement, despite the fact that he had already provided two breath samples roughly three (3) hours before he was ultimately booked. Accordingly, all evidence derived from the seizure of the Defendant should be suppressed. The following reasons substantiate this contention.

*First*, Defendant made a clear invocation of his right to procure additional independent testing. In fact, the record reflects that the Defendant repeatedly requested a blood draw. As such, there is little doubt that the Defendant invoked his due process rights.

*Second*, Trooper Beckner denied the Defendant any opportunity at all of procuring an independent blood test. The following factors evidence the above:

A. The Defendant was simply given no chance at ever procuring a blood draw. As in *Madden, Carr, and Hedges*, the Defendant was never given access to a phone and was repeatedly told that he could not get a blood draw. By way of recall, case law in Idaho focuses on whether an accused is given the "opportunity" to procure exculpatory evidence. Thus, even if the Defendant would have been unsuccessful at arranging a time and place for the draw, Trooper Beckner should still have provided the Defendant with even the chance at making a meaningful attempt at procuring exculpatory evidence within a reasonable time frame.

B. Defendant had already provided breath samples. It is undisputed that the Defendant provided two breath samples to Trooper Beckner via the Lifeloc FC 20 soon after he was placed

under arrest. He was not given access to a phone until several hours later. At that point, and given the exigency of blood-alcohol concentration, it is doubtful that the Defendant could have procured any meaningful test at all. The reason therefor is because, as in *Carr*, a delay of roughly four (4) hours precluded any meaningful opportunity to accurately gauge BAC.

C. The burden on the State is minimal. As we are discussing due process, our analysis must bear in mind the three factors elucidated in *Mathews, supra*, as informing whether a due process violation occurred. As stated, one of the factors involved is "the government's interest." *Id.* This factor weighs in the Defendant's favor as the burden on Trooper Beckner was minimal. It would have taken nothing for Beckner to simply allow the Defendant access to his telephone to attempt to make arrangements for independent testing. *Compare with Carr*, 128 Idaho at 185, 911 P.2d at 778 ("[T]he fiscal and administrative burden of allowing those who are arrested and tested for DUI to make a telephone call is minimal"). The record shows that two (2) hours went by before Trooper Beckner even began driving to Challis. At that time, Trooper Beckner had Defendant's cellular phone in his possession, but did not take the next step of handing it to the Defendant. All Trooper Beckner would have had to do was to turn around and hand the phone to the Defendant some time during the nearly three (3) hours that the Defendant was sitting in the back seat of Beckner's squad car. Again, this effort would have been minimal.

D. The benefit to the Defendant would have been great. *See* P. 13, herein. By allowing

the Defendant access to a telephone before four (4) hours elapsed, Defendant could have obtained evidence to establish a any sort of viable defense.

E. Roughly four (4) hours lapsed between the time the Defendant provided breath samples and the time that the Defendant was booked. This amount is well within the recognized time frame to constitute a violation of due process. In *Madden*, the amount of time that lapsed was 1.5 hours; in *Hedges*, the amount of time that lapsed was roughly three and one-half hours (3.5); in *Carr*, five (5) hours had elapsed.

F. Trooper Beckner engaged in dilatory conduct, thus prolonging the detention and thus effectively eliminating any chance that the Defendant had in procuring meaningful, independent testing or other exculpatory evidence. The record indicates that at some point during the stop, Trooper Beckner was walking in front of the car, speaking on his cellular phone. At another point in the encounter, Trooper Beckner is joined by another officer and the two stood in front of the car and have a discussion, engaging in no conduct relating to the arrest. Additionally, the record indicates that well over one (1) hour and forty-five (45) minutes passed before Trooper Beckner even left Stanley to drive to Challis, which took an additional hour. All the while, Defendant was in the back seat of the squad car.

#### **IV. CONCLUSION**

Defendant respectfully requests that this Court GRANT Defendant's Motion to Suppress and



thereby suppress all breath samples provided as well as all testimony of the State's witnesses as to their observations of the Defendant, after his vehicle was stopped, that suggest intoxication.

DATED this 20<sup>th</sup> day of August, 2010.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: 

Alexander P. McLaughlin, of the firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20<sup>th</sup> day of August, 2010, I caused to be served a true and accurate copy of the foregoing instrument via facsimile to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702  
208/331-1202

  
Alexander P. McLaughlin

MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS - 20

2010 SEP -1 PM 12: 35

Carl J. Withroe I.S.B. # 7051  
CITY OF STANLEY PROSECUTING ATTORNEY  
MOORE SMITH BUXTON & TURCKE, CHARTERED  
950 West Bannock Street, Suite 520  
Boise, Idaho 837002  
Telephone: (208) 331-1800  
Facsimile: (208) 331-1202  
E-Mail: [cjw@msbtlaw.com](mailto:cjw@msbtlaw.com)

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	STATE OF IDAHO'S RESPONSE TO
	)	DEFENDANT'S MOTION TO
v.	)	SUPPRESS AND OBJECTION TO
	)	THE AFFIDAVIT OF BRETT
BRETT J. JACOBSON,	)	JACOBSON IN SUPPORT OF
	)	MOTION TO SUPPRESS
Defendant.	)	
	)	
	)	

---

The State of Idaho, by and through the Stanley City prosecuting attorney, hereby submits this response to the defendant's motion to suppress and objects to the affidavit of Brett Jacobson in support of the motion to suppress.

As the factual record at this point is incomplete, the State will simply state here that the facts the defendant recites are largely wrong, presented without context, and incomplete. Additionally, the defendant's legal arguments do not square with the authorities he cites. Given the state of the record, the State requests the opportunity to brief the matter after the close of the

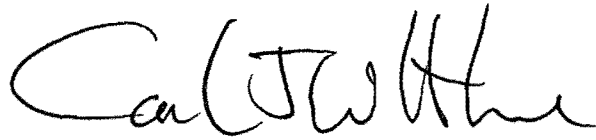
upcoming suppression hearing.

The State also objects to the affidavit of Brett J. Jacobson offered in support of the motion to suppress, unless the defendant is at the October 4 suppression hearing and is available to testify.

\* \* \*

August 30, 2010.

MOORE SMITH BUXTON & TURCKE, CHTD.

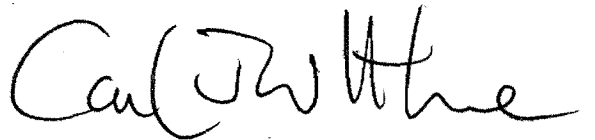


Carl J. Withroe  
City of Stanley Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on this 30th day of August, 2010, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon.

Alexander P. McLaughlin  
Davison, Copple, Copple, & Copple, LLP  
P.O. Box 1583  
Boise, ID 83702



Carl J. Withroe

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
mclaughlin@davisoncopples.com

DISTRICT COURT  
CUSTER COUNTY  
IDAHO  
LAILA PLUMMER  
2010 SEP -7 PM 12:15

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	SECOND MOTION TO SUPPRESS
	)	
vs.	)	
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
_____	)	

\* \* \*

COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record, Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and hereby moves this Court pursuant to Rule 12(b) of the Idaho Criminal Rules and the Fourth and Fourteenth Amendments of the United States Constitution for an Order suppressing any and all


SECOND MOTION TO SUPPRESS - 1

ORIGINAL

evidence obtained as a result of the unreasonable detention of the Defendant Brett J. Jacobson. This Motion is made on the grounds and for the reasons that Trooper Beckner lacked a legal basis to pull the Defendant over. This Motion is based on the records and files herein and the Affidavit of Brett J. Jacobson in Support of Motion to Suppress, previously filed. Wherefore, Defendant asks that this matter be set for hearing and it become incumbent upon the State to prove that the seizure of the Defendant was lawful.

DATED this 2<sup>nd</sup> day of September, 2010.

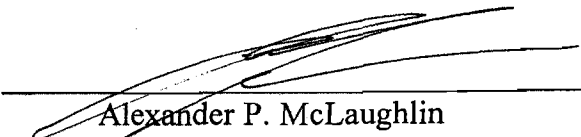
DAVISON, COPPLE, COPPLE & COPPLE, LLP

By:   
Alexander P. McLaughlin, of the firm  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2<sup>nd</sup> day of September, 2010, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702

  
Alexander P. McLaughlin

SECOND MOTION TO SUPPRESS - 2

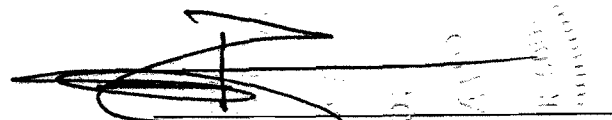
IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	CASE NO. CR-2010-316
Plaintiff,	)	
	)	
vs.	)	<b>ORDER SETTING ASIDE</b>
	)	<b>FINDING OF GUILT</b>
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
<hr/>		

There was a clerical error in the office of the courts, therefore:

IT IS HEREBY ORDERED that the finding of guilt is set aside until further notice of the court. This matter is set for Jury Trial on January 14<sup>th</sup>, 2011.

Dated this 24<sup>th</sup> day of September, 2010.

  
Charles L. Roos  
Magistrate Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on 9/24/10 a true and correct copy of the foregoing ORDER SETTING ASIDE FINDING OF GUILT was served by the method indicated below and addressed to each of the following:

Shawn M. Glen

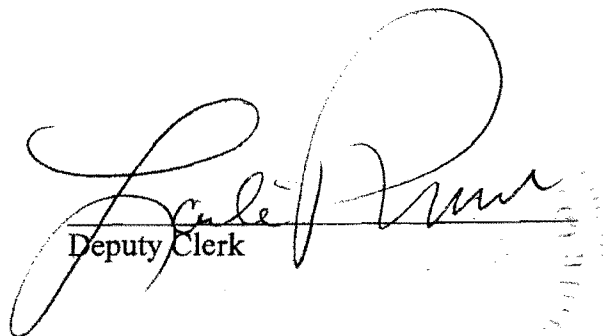
☒ Courthouse Mailbox

Alexander P. McLaughlin  
DAVIDSON, COPPLE, COPPLE & COPPLE  
PO Box 1583  
Boise, Idaho 83701

☒ U.S. Mail

Idaho Transportation Department  
Driver Services

☒ Faxed

  
Deputy Clerk

2010 OCT -4 PM 4:09

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

COURT MINUTES

CR-2010-0000316

State of Idaho vs. Brett J Jacobson

Hearing type: Motion to Suppress

Hearing date: 10/4/2010

Time: 1:40 pm

Judge: Charles L Roos

Minutes Clerk: Plummer Laila

Defense Attorney: Alexander McLaughlin

Prosecutor: Carl Withroc

Judge Roos inquired of defense counsel as to which motion he would like to take up first.  
Defense counsel made comments as to his motions.

Judge Roos stated that he would take up the second motion first; defense counsel withdrew the second motion.

Defense counsel called the defendant, Brett Jacobson to the witness stand, the defendant was sworn and testified.

Defense counsel has nothing further for the defendant.

The State cross examined.

Defense counsel objected, outside the scope of cross, overruled.



The State has no further questions for the defendant; the defendant was excused.

The State called Senior Trooper Kenneth Beckner to the witness stand; the witness was sworn and testified.

Defense counsel objected to relevance, Judge Roos inquired of defense counsel, Judge Roos made further comments. The State made comments and continued.

Defense counsel objected to leaded, Judge Roos instructed The State to lay foundation.

Defense counsel objected to no foundation, sustained.

Defense counsel objected leading, overruled.

The State has no further questions for this witness.

Defense counsel cross examined.

Judge Roos instructed the witness to answer questions, not ask them.

Brief recess.

Back on the record, Judge Roos reminded the witness that he is still under oath, defense counsel continued.

The State objected, sustained, pure speculation.

The State asked the relevance, Judge Roos asked defense counsel to help out. Defense counsel made comments. Judge Roos made comments. defense counsel continued.

The State objected to relevance, Judge Roos sustained.

Judge Roos made comments to defense counsel.

Defense counsel continued cross examining the witness.

Defense counsel has nothing further for this witness.

The State redirected the witness.

No further questions for this witness; the witness was excused.

Nothing further from the State.

Defense counsel made his argument.

The State made his argument.

Judge Roos inquired of defense counsel.

Defense counsel has nothing further.

Judge Roos made his factual determinations.

Judge Roos made the following ruling;

1. There is no undue or unwarranted delay.

Judge Roos denied the motion to suppress.

### **CERTIFICATE OF SERVICE**

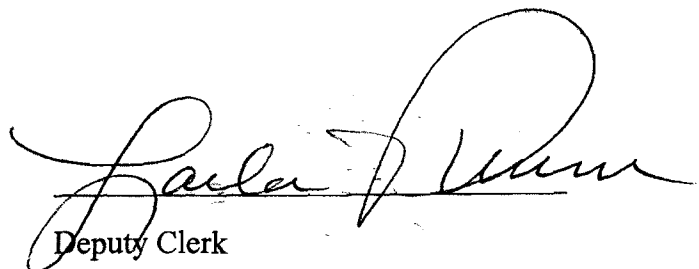
**I HEREBY CERTIFY** that on October 4, 2010 a true and correct copy of the foregoing was served by the method indicated below and addressed to each of the following:

City of Stanley Prosecutor

US Mail

Defense Counsel

US Mail



Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER


STATE OF IDAHO,	)	
	)	
Plaintiff,	)	CASE NO. CR-2010-316
	)	
-VS-	)	<b>ORDER</b>
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
_____	)	

This matter came on for the defendant's MOTION TO SUPPRESS AND defendant's SECOND MOTION TO SUPPRESS on Monday, October 4<sup>th</sup>, 2010, before The Honorable Charles L. Roos, Magistrate Judge at the Custer County courthouse in Challis, Idaho. Present for the State was City of Stanley Prosecuting Attorney, Carl Withroe. The defendant was present along with his counsel, Alexander McLaughlin.

Mr. McLaughlin withdrew the SECOND MOTION TO SUPPRESS.

The Court having heard testimony on defendant's MOTION TO SUPPRESS, and being fully advised **denies** said motion. Additionally, the court found, on the record, in open court, the Findings of Fact and Conclusions of Law.

Dated this 4<sup>th</sup> day of October, 2010.

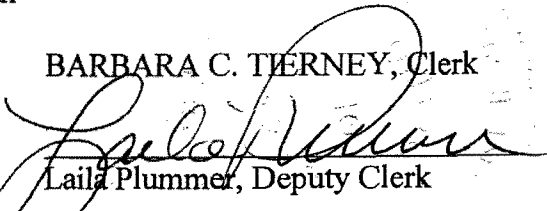
  
Charles L. Roos  
Magistrate Judge

CERTIFICATE OF MAILING

On the 4<sup>th</sup> day of October, 2010, I, Laila Plummer, certify that I mailed a full and true copy of the foregoing, securely sealed in an envelope with postage prepaid to:

Carl Withroe, Esq., City of Stanley Prosecutor, US Mail  
Alexander McLaughlin, Defense Counsel, US Mail

BARBARA C. TIERNEY, Clerk

  
Laila Plummer, Deputy Clerk

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	MOTION TO DISMISS
	)	
vs.	)	
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
<hr/>		

\* \* \*

COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record,  
Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and  
MOTION TO DISMISS - 1

hereby moves this Court pursuant to I.C. § 19-3501, the Sixth Amendment of the United States Constitution, and Article 1, Section 13 of the Idaho Constitution, for entry of its Order of Dismissal in the form as attached hereto and incorporated herein by this reference.

This Motion is made on the grounds and for the reasons that the State failed to bring the Defendant to trial on the charges in the above-captioned matter within six (6) months from the date that the Defendant appeared and plead not guilty for the first time, the date that Defendant appeared through counsel and plead not guilty for the second time, and the date that Defendant demanded a speedy jury trial pursuant to the foregoing provisions of state and federal law. Furthermore, there is no "good cause" for the delay at issue.

This Motion is based on the records and files herein, the Affidavit of Alexander P. McLaughlin in Support of Motion to Dismiss, and the Memorandum in Support of Motion to Dismiss, filed concurrently herewith.

Oral argument is requested on this Motion.

DATED this 14<sup>th</sup> day of January, 2011.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: \_\_\_\_\_

Alexander P. McLaughlin, of the firm  
Attorneys for Defendant

MOTION TO DISMISS - 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 44 day of January, 2011, I caused to be served a true and accurate copy of the foregoing instrument via facsimile to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702  
(208) 331-1202

  
Alexander P. McLaughlin

MOTION TO DISMISS - 3

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO DISMISS
	)	
vs.	)	
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	
_____	)	

\*\*\*

COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record,

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 1

Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and hereby submits this Memorandum in Support of Motion to Dismiss.

## **I. INTRODUCTION**

The memorandum at bar is in support of the Motion to Dismiss filed by the Defendant Brett J. Jacobson ("Jacobson"). Jacobson's position is straightforward. All charges in the above-captioned matter must be dismissed pursuant to I.C. § 19-3501, the Sixth Amendment of the United States Constitution, and Article 1, Section 13 of the Idaho Constitution, because the State has failed to bring Jacobson to trial within six (6) months/one-hundred and eighty days ("six months") from the date that Jacobson plead not guilty and demanded a speedy trial. In light of the foregoing and for the reasons set forth herein, Jacobson respectfully requests that this Court GRANT Jacobson's Motion to Dismiss.

## **II. STATEMENT OF FACTS**

On or about June 28, 2010, Jacobson was issued citations for Driving Under the Influence (I.C. § 18-8004), Possession of a Controlled Substance (I.C. § 37-2732), and Possession of Drug Paraphernalia (I.C. § 37-2734A(1)). An Arraignment was held on the same day before the Honorable Charles L. Roos. Jacobson appeared in person and entered a plea of "not guilty" on the record to each of the foregoing charges. No trial date was set at the Arraignment. Thereafter, on July 7, 2010, the undersigned entered a notice of appearance on behalf of Jacobson, entered yet another not guilty plea, and specifically demanded a speedy trial.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 2



Despite entering two not guilty pleas and a formal request for speedy trial, the State failed to bring the Defendant to trial within the timeframe elucidated in I.C. § 19-3501. Specifically, with regard to the first not guilty plea, six months lapsed as of December 26, 2010; regarding the second not guilty plea, six months lapsed as of January 3, 2011. Accordingly, no matter the date from which the six months is calculated, the State is in dereliction of I.C. § 19-3501(4). In accordance with legislative directive, all charges in this matter must be dismissed.

### III. ANALYSIS

An accused has both a State and Federal Constitutional right to a speedy trial. However, distinct therefrom is I.C. § 19-3501, which is more properly understood as a statutory right of dismissal when the time conditions of the statute are not met.

Because the provision at issue is a statute, resort to statutory interpretation is appropriate. The rules thereof are well established. See also Paolini v. Albertson's Inc., 143 Idaho 547, 549, 149 P.3d 822, 824 (2006) ("Statutory interpretation begins with the literal language of the statute") (emphasis added); See also Potlatch Corp. v. United States, 134 Idaho 916, 938, 12 P.3d 1260, 1282 (2000)) ("[I]t is not for this Court, nor any court, to make or change the law, but to interpret the law as enacted by the legislative branch") (emphasis added) (Silak, dissenting); See also MDS Investments, LLC, v. State, 138 Idaho 456, 465, 65 P.3d 197, 206 (2003) ("I subscribe to the view that the proper role of courts is to interpret laws, not to rewrite laws, no matter how well intentioned the result") (emphasis added) (Kidwell, dissenting).

As stated, the relevant provision is I.C. § 19-3501(4); it states:

“The court, unless good cause to the contrary is shown ... must order the prosecution or indictment to be dismissed ... [i]f a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.”

I.C. § 19-3501 (emphasis added); See also Rife v. Long, 127 Idaho 841, 848, 908 P.2d 143, 150 (1995) (“When used in a statute, the word ‘may’ is permissive rather than the imperative or mandatory meaning of ‘must’ or ‘shall’”) (emphasis added) (citations omitted).

Based on the clear text, the import of the foregoing statute is clear. Absent good cause, if an accused is charged with a misdemeanor, the charges must be dismissed if the accused has not been brought to trial within six (6) months from the entry of a plea of not guilty. So much was stated by our Idaho Supreme Court in State v. Clark, infra: “The statute mandates that unless the State can demonstrate ‘good cause’ for a delay greater than six months, the court must dismiss the case.” State v. Clark, 135 Idaho 255, 258, 16 P.3d 931, 934 (2000) (emphasis added).

In the recent case of State v. Moore, infra, our Idaho Court of Appeals elaborated on the meaning of “good cause,” stating that it “means that there was a substantial reason for the delay that rises to the level of a legal excuse.” See also State v. Moore, 148 Idaho 887, 899, 231 P.3d 532, 544 (Ct. App. 2010) (emphasis added); See also Id. (Despite other factors, “the reason for the delay lies at the heart of a good cause determination under I.C. § 19-3501”) (emphasis added).<sup>1</sup>

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<sup>1</sup> Note: Because I.C. 19-3501 is a statutory right of dismissal, analysis thereof is not governed by the balancing test of Barker v. Wingo, 407 U.S. 514 (1972); instead, it is governed by a case by case assessment of whether “good cause”

As to the appropriate analysis to determine if cause exists, our Idaho Supreme Court has stated that while the "ultimate question of whether legal excuse has been shown is a matter for judicial determination upon the facts and circumstances of each case ..., [a] trial judge does not have unbridled discretion to find good cause, however, and on appeal we will independently review the lower court's decision." Clark, 135 Idaho at 260, 16 P.3d at 936 (emphasis added).

In addition to the foregoing, it is worth noting that the safeguards under I.C. § 19-3501 are stricter than their constitutional counterparts. See e.g. Clark, 135 Idaho at 258, 16 P.3d at 934 ("[U]nder I.C. § 19-3501, criminal defendants are given additional protection beyond what is required by the United States and Idaho Constitutions"); See also Moore, 148 Idaho at 899, 231 P.3d at 544 ("Since it is a stricter standard, we will address the statutory speedy trial issue").

In the present case, the charges brought against the Defendant should be dismissed. The following reasons substantiate this contention.

*First*, Jacobson has established his prima facie case for dismissal. Jacobson's initial not guilty plea was made on June 28, 2010. The State has failed to bring Jacobson to trial within six months of the foregoing date. Thereafter, on July 7, 2010, Jacobson entered another not guilty plea and specifically demanded a speedy trial. Again, the State failed to bring the Defendant to trial within six months of July 7, 2010. The State has thus had two opportunities to comply with I.C. § 19-3501 and has failed in both instances.

*Second*, there is no good cause for the Court to decline to dismiss this action. As stated in exists for the delay. Clark, 135 Idaho at 260, 16 P.3d at 936; See also Idaho Trial Lawyers Handbook, § 3.13.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 5

Moore, supra, the core analysis for good cause is whether or not there is a "substantial reason" for the delay. In this matter, the record is void of any reason, excuse or justification as to why the State has been unable to bring Jacobson to trial within six months. There have been no continuances; there has been no waiver of speedy trial; Jacobson specifically invoked his constitutional and statutory right to a speedy trial (See e.g. Clark, 135 Idaho at 260, 16 P.3d at 936 (One of the factors that the Court is to consider in determining there is a substantial reason for delay is "whether the defendant asserted the right to a speedy trial")); and the motion to suppress was filed after this matter was set for trial and therefore had no bearing on the trial date; See also State v. McKeeth, 136 Idaho 619, 38 P.3d 1275 (Ct. App. 2002) ("The ultimate responsibility for the delay must rest with the government rather than with the defendant").

In short, the record is void of any substantial reason justifying the delay in question and there is certainly no reason for the delay which is in any way attributable to Jacobson. This is especially the case considering the fact that Jacobson pled not guilty twice and specifically demanded a speedy trial. Accordingly, there can be no good cause as to why the charges herein should not be dismissed. In light of the foregoing, and in accordance with the clear language of I.C. § 19-3501(4), dismissal is appropriate and warranted.

#### IV. CONCLUSION

Jacobson respectfully requests that this Court GRANT Jacobson's Motion to Dismiss.

DATED this <sup>24th</sup> day of January, 2011.

DAVISON, COPPLE, COPPLE & COPPLE, LLP


By: 

Alexander P. McLaughlin, of the firm  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>24th</sup> day of January, 2011, I caused to be served a true and accurate copy of the foregoing instrument via facsimile to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702  
(208) 331-1202

  
Alexander P. McLaughlin

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 7



County of Ada

as follows:

have personal knowledge of the facts contained herein and make this affidavit on the basis of such personal knowledge and belief.

for Driving Under the Influence (I.C. § 18-8004), Possession of a Controlled Substance (I.C. § 37-2732), and Possession of Drug Paraphernalia (I.C. § 37-2734A(1)). True and accurate copies of those citations are attached hereto as Exhibit "A" and are incorporated herein by this reference;

pleas of not guilty to each and every charge contained in the above captioned matter. True and accurate copies of the Court's Minutes evidencing the foregoing are attached hereto as Exhibit "B" and are incorporated herein by this reference;

- 101 -

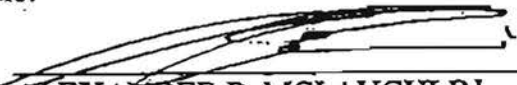
Demand for Speedy Jury Trial; and Demand for Sworn Complaint is attached hereto as Exhibit "C" and is incorporated herein by this reference;

5.) The State did not object to Defendant's Demand for Speedy Trial;

6.) Six (6) months, i.e., one hundred and eighty (180) days have lapsed since Defendant first pled not guilty; six (6) months, i.e., one hundred and eighty (180) days have lapsed since Defendant pled not guilty for the second time, through counsel; and six (6) months, i.e., one hundred and eighty (180) days have also lapsed since Defendant specifically demanded speedy trial;


7.) There have been no continuances filed in this matter. Further, Jacobson has not waived his right to speedy trial; and

8.) Based on the foregoing, Defendant's statutory right to dismissal and constitutional right to a speedy trial have lapsed. Accordingly, all charges in this matter should be dismissed pursuant to I.C. § 19-3501, the Sixth Amendment of the United States Constitution, and Article 1, Section 13 of the Constitution of the State of Idaho.

  
ALEXANDER P. MCLAUGHLIN

SUBSCRIBED AND SWORN to before me this 4th day of January, 2011.



  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise, Idaho  
Commission expires: 11/17/16


AFFIDAVIT OF ALEXANDER P. MCLAUGHLIN IN SUPPORT OF MOTION TO DISMISS - 3



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of January, 2011, I caused to be served a true and accurate copy of the foregoing instrument via facsimile to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702  
208/331-1202

  
Alexander P. McLaughlin

AFFIDAVIT OF ALEXANDER P. MCLAUGHLIN IN SUPPORT OF MOTION TO DISMISS - 4

1485141

IDAHO UNIFORM CRIMINAL  
IN THE DISTRICT COURT OF THE 7th JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Custer  
STATE OF IDAHO

## COMPLAINT AND SUMMONS

- ☐ Infraction Citation  
OR  
☒ Misdemeanor Citation  
☐ Accident Involved  
☐ Commercial Vehicle

Jacobson  
Last Name  
Brett J  
First Name Middle Initial

USDOT TK

☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other  
☐ GVWR 25001 + ☐ 18 + Persons ☐ Placard Hazardous Materials DR# Blonde RB  
Home Address 607 Woodriver Dr  
Company Name Lehighum, ID 83340 Phone #

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above-named defendant,

DL or SS# FA110676A State ID Sex M ☐ F  
Height 5'11" Wt. 175 Hair Blk Eyes Blu DOB 8/22/79  
Veh. Lic # 4654X State ID Yr. of Vehicle 04 Make Ford  
Model F150 Color White  
Did commit the following act(s) on 6/26 20 10 at 2224 o'clock P M.

Vio. #1 Poss. of Marijuana 37-2732(C) Code SectionVio. #2 Poss. of Paraphernalia 37-2734A Code Section

Location  Hwy 21/75  
Hwy 61410 Beckner 3421-3 County Idaho  
Date Officer/Party Serial #/Address Dept.

Date Witnessing Officer Serial #/Address Dept.  
THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT

You are hereby summoned to appear before the Clerk of the Magistrate's Division of the  
District Court of Custer County Challis Idaho,  
located at \_\_\_\_\_ on the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_ (OR) on or after  
20\_\_\_\_ and on or before \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

I acknowledge receipt of this summons and I promise to appear at the time indicated.

Defendant's Signature In Custody  
My service upon the defendant personally on the 26 day of June, 2010  
Officer 643

See reverse side of your copy for PENALTY and COMPLIANCE instructions.  
COPY VIOLATION #1

IDAHO UNIFORM CRIMINAL

IN THE DISTRICT COURT OF THE 7th JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Custer  
STATE OF IDAHO

## COMPLAINT AND SUMMONS

- ☐ Infraction Citation  
OR  
☒ Misdemeanor Citation  
☐ Accident Involved  
☐ Commercial Vehicle

Jacobson  
Last Name  
Brett J  
First Name Middle Initial

USDOT TK

☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other  
☐ GVWR 25001 + ☐ 18 + Persons ☐ Placard Hazardous Materials DR# Blonde RB  
Home Address 607 Woodriver Dr  
Company Name Lehighum, ID 83340 Phone #

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above-named defendant,

DL or SS# FA110676A State ID Sex M ☐ F  
Height 5'11" Wt. 175 Hair Blk Eyes Blu DOB 8/22/79  
Veh. Lic # 4654X State ID Yr. of Vehicle 04 Make Ford  
Model F150 Color White  
Did commit the following act(s) on 6/26 20 10 at 2224 o'clock P M.

Vio. #1 Drive Under the Influence K8-800 Code SectionVio. #2 HB7 Insuff. 1.161 Code Section

Location Hwy 21/75  
Hwy 61410 Beckner 3421-3 County Idaho  
Date Officer/Party Serial #/Address Dept.

Date Witnessing Officer Serial #/Address Dept.  
THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT

You are hereby summoned to appear before the Clerk of the Magistrate's Division of the  
District Court of Custer County Challis Idaho,  
located at \_\_\_\_\_ on the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_ (OR) on or after  
20\_\_\_\_ and on or before \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

I acknowledge receipt of this summons and I promise to appear at the time indicated.

Defendant's Name: In Custody  
I hereby certify service upon the defendant personally on the 26 day of June, 2010  
Officer 643

NOTICE: See reverse side of your copy for PENALTY and COMPLIANCE instructions.  
COURT COPY VIOLATION #1

-104-

EXHIBIT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER  
MAGISTRATE DIVISION

DISTRICT C  
CUSTER CO  
IDAHO  
LAILA PLUM  
2010 JUN 28 AM

STATE OF IDAHO, Plaintiff  
Vs.  
Brett J Jacobson, Defendant

Prosecutor: Paul J Fitzer Esq

Attorney: \_\_\_\_\_

MINUTE ENTRY AND ORDER

CASE NO. CR-2010-0000316

- ☐ Judge \_\_\_\_\_ found Probable Cause
- ☐ Defendant failed to appear, issue bench warrant in the amount of \$ \_\_\_\_\_
- ☒ Defendant was advised of his/her rights. ☒ Defendant completed Notification of Subsequent Pen
- ☒ Defendant was advised of minimum/maximum penalties. ☐ Defendant completed a Financial Statement and Order
- ☒ Defendant waived counsel/will obtain his/her own counsel/requested court appointed counsel. \_\_\_\_\_ was appointed.
- ☒ Defendant entered a plea of ☐ GUILTY ☒ NOT GUILTY
- ☒ Set for hearing PT CT - JT - COP - SENT - REST - DISP - MOTION - STATUS - OTHER \_\_\_\_\_
- ☒ CHARGE: Driving Under the Influence I.C. 118-8004 M Amended to: \_\_\_\_\_
- ☐ SENTENCE: ☐ CHARGE DISMISSED \_\_\_\_\_
- ☐ Court Costs \$ \_\_\_\_\_ ☐ Fine \$ \_\_\_\_\_ ☐ Suspended Fine \$ \_\_\_\_\_
- ☐ Probation Fee \$ \_\_\_\_\_ ☐ Comm Serv Ins \$ \_\_\_\_\_ ☐ TOTAL \$ \_\_\_\_\_
- ☐ May deduct cost of counseling from fine with copy of paid receipt.
- ☐ Restitution to victim \_\_\_\_\_ in the amount of \$ \_\_\_\_\_
- ☐ Jail: \_\_\_\_\_ days, with \_\_\_\_\_ days suspended (at the Court's discretion), and credit for \_\_\_\_\_ days served.
- ☐ Must attend alcohol counseling or alcohol awareness class. ☐ Must attend tobacco awareness class.
- ☐ Driver's License suspended for \_\_\_\_\_ days. Temporary with proof of insurance for: to and from work and work purp  
health; to and from alcohol counseling; probation officer and/or community service.
- ☐ On Supervised/Court Probation for \_\_\_\_\_ reporting to Aletia Straub/Court Clerk.
- ☐ \_\_\_\_\_ Hours (8 hour day) Community Service at \$10.00 per day.
- ☒ Defendant is release on his/her own recognizance. ☐ Defendant is remanded with \$ \_\_\_\_\_ bail.
- ☒ Do not violate any laws, other than traffic infractions. ☐ Notify clerk of any change in address. (within 24 hou
- ☒ May not consume or possess alcohol. ☒ May not enter bars, taverns or liquor stores.
- ☒ Must waive rights in the United States, State of Idaho or any other State, for search and/or testing, at your expense.
- ☒ OTHER: make all court appearances

☐ Notified of \$2.00 Handling Fee.  
Date: 6/28/10

☐ Notified of right to appeal.

Charles L. Roos, Magistrate

EXHIBIT

B

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER  
MAGISTRATE DIVISION

DISTRICT COURT  
CUSTER COUNTY  
IDAHO  
ATLA PLUM  
2010 JUN 28 AM 9

STATE OF IDAHO, Plaintiff  
Vs.  
Brett J Jacobson, Defendant

Prosecutor: Paul J Fitzner Esq

Attorney: \_\_\_\_\_

MINUTE ENTRY AND ORDER

CASE NO. CR-2010-0000316

- ☐ Judge \_\_\_\_\_ found Probable Cause
- ☐ Defendant failed to appear, issue bench warrant in the amount of \$ \_\_\_\_\_
- ☒ Defendant was advised of his/her rights. ☐ Defendant completed Notification of Subsequent Per
- ☒ Defendant was advised of minimum/maximum penalties. ☐ Defendant completed a Financial Statement and Ord
- ☒ Defendant waived counsel/will obtain his/her own counsel/requested court appointed counsel. \_\_\_\_\_ was appointed
- ☒ Defendant entered a plea of ☐ GUILTY ☒ NOT GUILTY
- Set for hearing (PT) - CT - JT - COP - SENT - REST - DISP - MOTION - STATUS - OTHER \_\_\_\_\_
- CHARGE: Controlled Substance-possession of I.C. 137-2732(C)(3) Amended to: \_\_\_\_\_
- ☐ SENTENCE: ☐ CHARGE DISMISSED \_\_\_\_\_
- ☐ Court Costs \$ \_\_\_\_\_ ☐ Fine \$ \_\_\_\_\_ ☐ Suspended Fine \$ \_\_\_\_\_
- ☐ Probation Fee \$ \_\_\_\_\_ ☐ Comm Serv Ins \$ \_\_\_\_\_ ☐ TOTAL \$ \_\_\_\_\_
- ☐ May deduct cost of counseling from fine with copy of paid receipt.
- ☐ Restitution to victim \_\_\_\_\_ in the amount of \$ \_\_\_\_\_
- ☐ Jail: \_\_\_\_\_ days, with \_\_\_\_\_ days suspended (at the Court's discretion), and credit for \_\_\_\_\_ days served.
- ☐ Must attend alcohol counseling or alcohol awareness class. ☐ Must attend tobacco awareness class.
- ☐ Driver's License suspended for \_\_\_\_\_ days. Temporary with proof of insurance for: to and from work and work purpo
- health; to and from alcohol counseling; probation officer and/or community service.
- ☐ On Supervised/Court Probation for \_\_\_\_\_ reporting to Aletia Straub/Court Clerk.
- ☐ \_\_\_\_\_ Hours (8 hour day) Community Service at \$10.00 per day.
- ☐ Defendant is release on his/her own recognizance. ☐ Defendant is remanded with \$ \_\_\_\_\_ bail.
- ☐ Do not violate any laws, other than traffic infractions. ☐ Notify clerk of any change in address. (within 24 hou
- ☐ May not consume or possess alcohol. ☐ May not enter bars, taverns or liquor stores.
- ☐ Must waive rights in the United States, State of Idaho or any other State, for search and/or testing, at your expense.
- ☐ OTHER: \_\_\_\_\_

☐ Notified of \$2.00 Handling Fee.  
Date: 6/28/10

☐ Notified of right to appeal.

Charles L. Roos, Magistrate

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER  
MAGISTRATE DIVISION

DISTRICT CC  
CUSTER CO  
IDAHO  
LAILA PLI

2010 JUN 28 AM

STATE OF IDAHO, Plaintiff  
Vs.  
Brett J Jacobson, Defendant

Prosecutor: Paul J Fitzer Esq

Attorney: \_\_\_\_\_

MINUTE ENTRY AND ORDER

CASE NO. CR-2010-0000316

- ☐ Judge \_\_\_\_\_ found Probable Cause
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- ☒ Defendant was advised of minimum/maximum penalties. ☐ Defendant completed a Financial Statement and Order
- ☒ Defendant waived counsel/will obtain his/her own counsel/requested court appointed counsel. \_\_\_\_\_ was appointed.
- ☒ Defendant entered a plea of ☐ GUILTY ☒ NOT GUILTY
- ☒ Set for hearing PT - CT - JT - COP - SENT - REST - DISP - MOTION - STATUS - OTHER \_\_\_\_\_
- ☒ CHARGE: Drug Paraphernalia-Use or Possess With Intent to Use I.C. I37-2734A(1) Amended to: \_\_\_\_\_
- ☐ SENTENCE: ☐ CHARGE DISMISSED \_\_\_\_\_
- ☐ Court Costs \$\_\_\_\_\_ ☐ Fine \$\_\_\_\_\_ ☐ Suspended Fine \$\_\_\_\_\_
- ☐ Probation Fee \$\_\_\_\_\_ ☐ Comm Serv Ins \$\_\_\_\_\_ ☐ TOTAL \$\_\_\_\_\_
- ☐ May deduct cost of counseling from fine with copy of paid receipt.
- ☐ Restitution to victim \_\_\_\_\_ in the amount of \$\_\_\_\_\_
- ☐ Jail: \_\_\_\_\_ days, with \_\_\_\_\_ days suspended (at the Court's discretion), and credit for \_\_\_\_\_ days served.
- ☐ Must attend alcohol counseling or alcohol awareness class. ☐ Must attend tobacco awareness class.
- ☐ Driver's License suspended for \_\_\_\_\_ days. Temporary with proof of insurance for: to and from work and work purpose health; to and from alcohol counseling; probation officer and/or community service.
- ☐ On Supervised/Court Probation for \_\_\_\_\_ reporting to Aletia Straub/Court Clerk
- ☐ \_\_\_\_\_ Hours (8 hour day) Community Service at \$10.00 per day.
- ☐ Defendant is release on his/her own recognizance. ☐ Defendant is remanded with \$\_\_\_\_\_ bail.
- ☐ Do not violate any laws, other than traffic infractions. ☐ Notify clerk of any change in address. (within 24 hours)
- ☐ May not consume or possess alcohol. ☐ May not enter bars, taverns or liquor stores.
- ☐ Must waive rights in the United States, State of Idaho or any other State, for search and/or testing, at your expense.
- ☐ OTHER: \_\_\_\_\_

☐ Notified of \$2.00 Handling Fee.

Date: 6/28/10

☐ Notified of right to appeal.

Charles L. Roos, Magistrate

ALEXANDER P. MCLAUGHLIN (ISB NO. 7977)  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
Attorneys at Law  
Chase Capitol Plaza  
Post Office Box 1583  
199 North Capitol Boulevard  
Suite 600  
Boise, Idaho 83701  
Telephone: (208) 342-3658  
Facsimile: (208) 386-9428  
[mclaughlin@davisoncopples.com](mailto:mclaughlin@davisoncopples.com)

Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF APPEARANCE; ENTRY
	)	OF NOT GUILTY PLEA; DEMAND FOR
BRETT J. JACOBSON,	)	SPEEDY JURY TRIAL; AND DEMAND
	)	FOR SWORN COMPLAINT
Defendant.	)	
	)	
	)	

...

COMES NOW the Defendant, Brett J. Jacobson, by and through his attorney of record,

NOTICE OF APPEARANCE; ENTRY OF NOT GUILTY PLEA; DEMAND FOR SPEEDY JURY TRIAL; AND  
DEMAND FOR SWORN COMPLAINT - 1



Alexander P. McLaughlin of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and pursuant to Rule 6(d) of the Idaho Misdemeanor Criminal Rules hereby enters an appearance and plea of not guilty to each and every charge in the above-entitled matter.

Pursuant to the Sixth Amendment of the United States Constitution, Article 1, Section 13 of the Constitution of the State of Idaho, and Idaho Code, Section 19-3501, Defendant respectfully demands a speedy jury trial.

Pursuant to Rule 3(d), Idaho Misdemeanor Criminal Rules, Defendant respectfully demands that a sworn complaint be filed for each offense charged by uniform citation in the above-entitled action.

DATED this 7<sup>th</sup> day of July, 2010.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: 


Alexander P. McLaughlin, of the firm  
Attorneys for Defendant

NOTICE OF APPEARANCE; ENTRY OF NOT GUILTY PLEA; DEMAND FOR SPEEDY JURY TRIAL; AND  
DEMAND FOR SWORN COMPLAINT - 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21<sup>st</sup> day of July, 2010, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702

  
Alexander P. McLaughlin

NOTICE OF APPEARANCE; ENTRY OF NOT GUILTY PLEA; DEMAND FOR SPEEDY JURY TRIAL; AND  
DEMAND FOR SWORN COMPLAINT - 3



2011 JAN -7 AM 9:40

mclaughlin@davisoncopples.com

**Brett J. Jacobson**

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,

Plaintiff,

**vs.**

BRETT J. JACOBSON,

**Defendant,**

Case No. CR-2010-0000316

## ORDER OF DISMISSAL

\* \* \*

Jacobson's Motion to Dismiss, and the Court having considered the foregoing motion, the

ORDER OF DISMISSAL - 1

ORIGINAL

documentation submitted in support thereof, and the arguments contained therein, and cause appearing therefor;

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is GRANTED;

IT IS HEREBY FURTHER ORDERED that all charges against the Defendant in the above-captioned matter be and are hereby dismissed with prejudice.

DATED this 7<sup>th</sup> day of January, 2011.



JUDGE CHARLES L. ROOS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7<sup>th</sup> day of January, 2011, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Alexander P. McLaughlin  
Davison, Copple, Copple & Copple  
Post Office Box 1583 208  
Boise, Idaho 83701 FAX 386-9428 ✓

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702 FAX 208 331-1202 ✓

  
Clerk

ORDER OF DISMISSAL - 2

2011 FEB 14 AM 11:53

Paul J. Fitzer, I.S.B. # 5675

Carl J. Withroe, I.S.B. # 7051  
CITY OF STANLEY PROSECUTING ATTORNEY  
MOORE SMITH BUXTON & TURCKE, CHARTERED  
950 West Bannock Street, Suite 520  
Boise, Idaho 837002  
Telephone: (208) 331-1800  
Facsimile: (208) 331-1202  
E-Mail: [cjw@msbtlaw.com](mailto:cjw@msbtlaw.com)

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2010-0000316
	)	
v.	)	<b>NOTICE OF APPEAL</b>
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	

---

Pursuant to Idaho Crim. R. 54.1, the State of Idaho, by and through the prosecuting attorney for the City of Stanley, hereby submits this Notice of Appeal in the above-captioned matter.

Pursuant to Idaho Crim. R. 54.4:

1. The title of the court which heard the trial or proceedings appealed from and the name of the presiding magistrate: The title of the court is the Magistrate Division of the District Court for the Seventh Judicial District of the State of Idaho, in and for Custer County; the name

of the presiding magistrate is Hon. Charles L. Roos, Magistrate Judge.

2. The title of the court to which the appeal is taken: The District Court for the Seventh Judicial District of the State of Idaho, in and for Custer County.

3. The date and heading of the judgment, decision, or order from which the appeal is taken: The order appealed from is entitled "Order of Dismissal" and is dated January 7, 2011.

4. Whether the appeal is taken upon matters of law, or upon matters of fact, or both: Both.

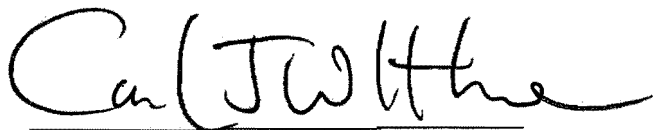
5. It is believed the testimony and proceedings in the hearings were recorded, and it is believed they were recorded using electronic means. The party in whose possession such recording is located is believed to be the clerk of the court. A transcript of the proceedings in this matter occurring on January 7, 2011 is requested.

6. The issue the State intends to raise on appeal includes, but, pursuant to the Idaho Criminal Rules is not limited to, whether the Magistrate Court erred by dismissing this matter upon the Defendant's motion.

\* \* \*

February 11, 2011.

MOORE SMITH BUXTON & TURCKE, CHARTERED

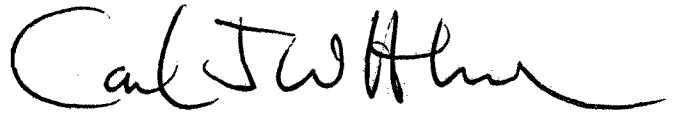
A handwritten signature in black ink, appearing to read "Carl J. Withroe", written over a horizontal line.

Carl J. Withroe  
City of Stanley Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of February, 2011, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon.

Alexander P. McLaughlin  
Davison, Copple, Copple, & Copple, LLP  
P.O. Box 1583  
Boise, ID 83702

A handwritten signature in black ink, appearing to read "Carl J. Withroe", written over a horizontal line.

Carl J. Withroe

CUSTER COUNTY  
**CLERK OF THE DISTRICT COURT**  
EX-OFFICIO AUDITOR RECORDER  
P.O. BOX 385  
CHALLIS, ID 83226  
(208) 879-2359

DISTRICT COURT  
CUSTER COUNTY  
IDAHO  
LAILA PLUMMER  
2011 FEB 17 PM 2:01

February 17, 2011

TO: Carl J. Withroe  
Moore Smith Buxton & Turcke, Chtd  
950 West Bannock Street, Suite 520  
Boise, Idaho 83702

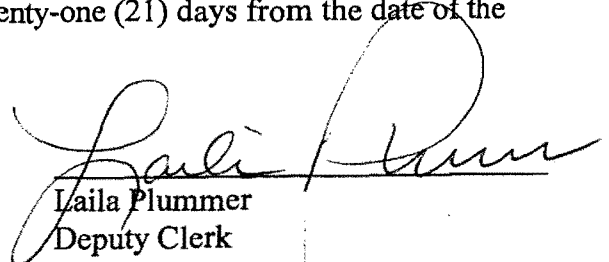
Alexander P. McLaughlin  
Davison, Copple, Copple & Copple, LLP  
PO Box 1583  
Boise, Idaho 83702

RE: CR-2010-316

State of Idaho vs. Brett J. Jacobson

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on February 17<sup>th</sup>, 2011, I lodged a transcript of 4 pages in the above-referenced appeal with the District Court Clerk of the County of Custer in the Seventh Judicial District pursuant to the Notice of Appeal. Plaintiff and Defendant are hereby notified that they may pick up a copy of the transcript within twenty-one (21) days from the date of the mailing of this notice of lodging.

  
Laila Plummer  
Deputy Clerk

cc: Counsel  
Clerk of the District Court

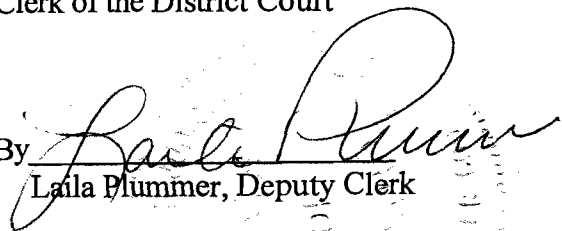
IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	Custer County No. CR-2010-316
	)	
vs.	)	
	)	
BRETT J. JACOBSON,	)	NOTICE OF LODGING OF
	)	CLERK'S RECORD
Defendant/Respondent,	)	
	)	

Notice is hereby given that on February 22<sup>nd</sup>, 2011; the Clerk's Record in the above referenced appeal was lodged with the District Court Clerk.

The Parties shall have twenty-one (21) days from the date of service of the appeal record to file any objections, together with a Notice of Hearing, with the District Court. If no objection is filed, the record will be deemed settled and will be filed with the District Court.

BARBARA C. TIERNEY  
Clerk of the District Court

By   
Laila Plummer, Deputy Clerk

cc: Counsel

CLERK OF DISTRICT COURT  
IDAHO  
CARLA PLUMMER  
2011 APR 15 PM 2:10

Paul J. Fitzer, I.S.B. # 5675

Carl J. Withroe, I.S.B. # 7051  
CITY OF STANLEY PROSECUTING ATTORNEY  
MOORE SMITH BUXTON & TURCKE, CHARTERED  
950 West Bannock Street, Suite 520  
Boise, Idaho 837002  
Telephone: (208) 331-1800  
Facsimile: (208) 331-1202  
E-Mail: [cjw@msbtlaw.com](mailto:cjw@msbtlaw.com)

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2010-0000316
	)	
v.	)	<b>MOTION TO AUGMENT</b>
	)	<b>THE RECORD</b>
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	

---

Pursuant to Idaho Crim. R. 54.1, the State of Idaho, by and through the prosecuting attorney for the City of Stanley, hereby moves to augment the record in this matter to include one document. The document is the Notice of Trial Setting, issued by the Magistrate Court on August 13, 2010. A true and correct copy of it is attached hereto as Exhibit A. The document should have been included with the record. *See* Idaho Crim. R. 54.8 ("The official court file of any criminal action appealed to the district court, including the minute entries or orders, together with the exhibits offered or admitted, shall constitute the clerk's record in such appeal.") It

**MOTION TO AUGMENT THE RECORD - 1**



appears this document was inadvertently omitted from the record prepared for this appeal.

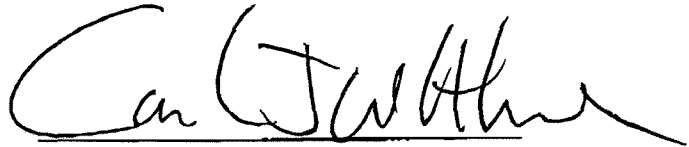
There is good cause to include the document. First, there is no question about its authenticity and the State cannot imagine there could be a dispute about its contents. Second, there can be no prejudice to the defendant since he was mailed a copy and never claimed to have not received it. Third, the Register of Actions, which is part of the record, indicates this document is part of the Court's file and was issued on August 13, 2010. Finally, as noted above, by rule the document is part of the record and its omission should be corrected.

A proposed order is included with this motion.

\* \* \*

April 15, 2011.

MOORE SMITH BUXTON & TURCKE, CHARTERED

A handwritten signature in black ink, appearing to read "Carl J. Withroe". The signature is fluid and cursive, with a large initial "C" and "W".

Carl J. Withroe  
City of Stanley Prosecuting Attorney

CERTIFICATE OF SERVICE

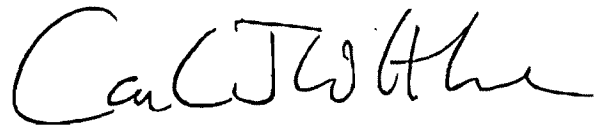
I hereby certify that on this 15th day of April, 2011, I did send a true and correct copy of the foregoing document upon the parties listed below via facsimile.

Alexander P. McLaughlin  
Davison, Copple, Copple, & Copple, LLP  
P.O. Box 1583  
Boise, ID 83702

(208) 386-6902

Hon. Dane Watkins, Jr.  
605 North Capital Avenue  
Idaho Falls, ID 83402

(208) 529-1300



---

Carl J. Withroe

In and For the County of Custer  
Main Street, PO Box 385  
Challis, Idaho 83226

DISTRICT COURT  
CUSTER COUNTY  
IDAHO  
LAILA PLUMMER

2010 AUG 13 PM 1:04

STATE OF IDAHO,  
Plaintiff.

vs.

Brett J Jacobson  
PO Box 4854  
Ketchum, ID 83340

Defendant.

DOB: [REDACTED]  
DL or SSN: [REDACTED] ID

RECEIVED

AUG 16 2010

MSB & T, CTD.

Case No: CR-2010-0000316

NOTICE OF TRIAL

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Jury Trial Friday, January 14, 2011 09:00 AM

Judge: Charles L Roos

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Friday, August 13, 2010.

Defendant: Brett J Jacobson  
Mailed\_XX\_ Hand Delivered\_\_\_\_\_ Hand Delivered Jail\_\_\_\_\_

Private Counsel: Alexander P McLaughlin Esq  
PO Box 1583  
Boise, ID 83701  
Mailed\_XX\_ Hand Delivered\_\_\_\_\_ Courthouse Mailbox\_\_\_\_\_

Prosecutor: Paul J Fitzer Esq  
Mailed\_XX\_ Hand Delivered\_\_\_\_\_ Courthouse Mailbox\_\_\_\_\_

Dated: Friday, August 13, 2010  
Barbara C Tierney  
Clerk Of The District Court

By: [Signature]  
Deputy Clerk

Notice Of Trial

DOC22tr 7/96



APR 13 2011  
2011 APR 13 11:27

Paul J. Fitzer, I.S.B. # 5675  
Carl J. Withroe, I.S.B. # 7051  
CITY OF STANLEY PROSECUTING ATTORNEY  
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Attorneys for Plaintiff-Appellant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	Case No. CR-2010-0000316
	)	
v.	)	<b>APPELLANT'S BRIEF</b>
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant-Respondent.	)	
	)	

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ORIGINAL

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**I.**

**STATEMENT OF THE CASE**

**A. Nature of the Case**

Late in the evening of June 26, 2010, the defendant, Brett Jacobson, was arrested on suspicion of DUI in Stanley. He was arraigned, pleaded not guilty, and released on the morning of the 28<sup>th</sup>. Later, he secured counsel and demanded to be charged by complaint. The State obliged, and a trial date of January 14, 2011 was set on August 13. Jacobson never objected to the trial date until exactly ten days before the scheduled trial, when he filed a motion to dismiss on speedy trial grounds.

Two days later, and before the State could file a response, the Magistrate Court conducted a telephonic hearing. At the hearing, the court found that the reason for the delay was a quirk of the computerized trial-scheduling system. It was explained that the computer calculated the speedy trial date from the date of the complaint—not the date when Jacobson first pleaded not guilty. The court ruled that the initial plea started the speedy trial clock, and, despite the relatively short eleven-day delay, Jacobson's failure to object to the trial date until right before trial, and despite the lack of argument or evidence as to prejudice resulting from the delay, the court granted the motion and dismissed the case.

The State appeals that judgment.

**B. Course of Proceedings and the Facts**

While patrolling the streets of Stanley, Idaho on the evening of June 26, 2010, Idaho State Police Senior Trooper Ken Beckner stopped the vehicle the defendant-respondent Brett

Jacobson was driving. (R. p. 8.) Trooper Beckner ultimately arrested Jacobson on suspicion of driving under the influence, issued a citation, and transported him to the Custer County jail in Challis. (R. pp. 5-9.) (Trooper Beckner also cited Jacobson for possession of marijuana and paraphernalia. (R. p. 6.)) Jacobson was arraigned, entered a plea of not guilty, and was ordered released on his own recognizance on the morning of June 28. (R. p. 12.)

On July 9, 2010, Jacobson's counsel filed an appearance, entered a plea of not guilty, demanded a speedy trial by jury, and demanded that a sworn complaint be filed for each offense. (R. pp. 16-17.) (Jacobson did not allege any defect with the citation.) Concurrently with the appearance/plea/demand for speedy trial and sworn complaint, Jacobson filed a motion for extension of time for filing pretrial motions, which the Magistrate Court granted on July 19. (R. pp. 19-20, 22-23.) Jacobson also filed discovery requests on July 9. (R. p. 1 (register of actions entry).) The State's notice of service of discovery responses was filed with the Court on July 26. The State served responses on Jacobson on July 22. (R. p. 2 (register of actions entry).)

On August 2, pursuant to Jacobson's demand, the State filed a criminal complaint alleging the same violations as the citation. Jacobson's counsel accepted service of the criminal complaint on August 9. (R. p. 42.) Jacobson filed a second request for discovery on August 13. (R. p. 2 (register of actions entry).) The court issued a notice of trial on August 13, setting trial for January 14, 2011. *See* Exhibit A to the State's Motion to Augment Record, filed Apr. 15, 2011 and pending resolution. A pretrial order issued that same day, which provided that pretrial motions must be filed with the court within 21 days of trial. (R. p. 44.) Notice of service of responses to Jacobson's second request was filed on August 19. (R. p. 2 (register of actions



entry).) Jacobson never objected to the State's responses to discovery.

On August 23, Jacobson filed a motion to suppress, claiming his right to a phone call following the breath test was denied. (R. pp. 49-76.) After an evidentiary hearing on October 4, the court denied the motion. (R. p. 86.)

Despite that pretrial order requiring motions to be filed within 21 days of trial, on January 4, Jacobson filed a motion to dismiss, contending that his constitutional and statutory rights to a speedy trial had been violated. (R. pp. 87-88.) Prior to this filing, Jacobson had not complained at all about the trial date or the pace of the case. Jacobson contended his six-month period expired on January 3, 2011. In his memorandum supporting his motion to dismiss, Jacobson did not identify what he believed the reason for the delay to be, but argued that good cause for the delay did not exist. (He omitted mention of the request for an extension of time to file pre-trial motions and that he requested to be charged by complaint after his initial arrest.) Jacobson did not argue that the length of the delay—eleven days by his calculations—was excessive or prejudicial: He offered nothing relating to excessive pretrial incarceration, anxiety caused by the delay, or about the possibility that his case could be impaired by the delay. Jacobson simply argued six months is six months.

The State had not quite finished its written response, when, on January 7, the court initiated a call to counsel and conducted a telephonic hearing on the motion to dismiss. (R. p. 4 (register of actions entry); Tr. p. 2, LL. 13-14.) (Jacobson requested oral argument on his motion, but did not schedule or provide notice of a hearing.) At argument, Jacobson again failed to produce either argument or evidence that he had been prejudiced by the alleged delay. (Tr. p.

2, L. 25-p. 3, L. 2.) The court found that the speedy trial clock commenced running on June 28, when Jacobson was first arraigned and pleaded not guilty. (Tr. p. 3, LL. 10-15.) The Court then acknowledged the criminal complaint having been filed on August 2. (Tr. p. 3, LL. 17-18.)

Neither the State nor Jacobson had argued what the cause of delay was (although the State did contend that the speedy-trial clock would not have expired by January 14 because of the complaint and later not-guilty plea). But the magistrate judge had located the cause. As it turns out, the cause was a computer quirk. The judge explained that when a criminal complaint is entered into the court's "ISTARS" computer program, that program automatically displays a speedy trial date to comply with the six-month rule. (Tr. p. 3, LL. 17-25.) So, the judge continued, when the August 2 complaint was entered into ISTARS, the computer set a trial date based on that date, not the June 28 date. (Tr. p. 3, LL. 25-31.)

The court acknowledged the untimely nature of Jacobson's motion, but found that it was compelled to hear the motion, and, to dismiss that case based solely on the fact that trial was not held within six months. (Tr. p. 4, LL. 3-6.) A judgment dismissing the action issued the same day. (R. pp. 108-109.)

## **II.**

### **ISSUE ON APPEAL**

The issue presented for appeal is whether the Magistrate Court erred in dismissing the action on the grounds that Jacobson's right to a speedy trial had been violated.

### III.

#### STANDARD OF REVIEW

Idaho Crim. R. 54.17 provides the method of appellate review in appeals to the district court from the magistrate division. That rule provides that in an appeal “not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the Idaho appellate rules.” Idaho Crim. R. 54.17(a).

Speedy trial questions present mixed questions of law and fact. *State v. Clark*, 135 Idaho 255, 257, 16 P.3d 931, 933 (2000). In an appeal from the district court to the Supreme Court, the higher court will not overturn the lower court’s factual findings unless they are clearly erroneous, and a factual finding will not be deemed clearly erroneous unless the appellate court “is left with a definite and firm conviction that a mistake has been made.” *State v. Cottrell*, 132 Idaho 181, 184-85, 968 P.2d 1090, 1093-94 (Ct. App. 1998). On questions of law, the appellate court exercises free review. *Id.*

### IV.

#### ARGUMENT

Jacobson grounded his motion to dismiss in the Sixth Amendment to the U.S. Constitution, Idaho Const. art. I, § 13, and I.C. § 19-3501, Idaho’s speedy trial statute. The speedy trial statute, it is said, offers additional protection beyond what both the federal and state constitutions provide. *Clark*, 135 Idaho at 257, 16 P.3d at 933; *State v. McKeeth*, 136 Idaho 619, 626, 38 P.3d 1275, 1282 (Ct. App. 2001). It provides this:

The Court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

\* \* \*

(4) If a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

I.C. § 19-3501(4). "Good cause" is the operative language; the Idaho Supreme Court has held that "good cause" means there is a substantial reason for the delay that rises to the level of a legal excuse. *State v. Young*, 136 Idaho 113, 116, 29 P.3d 949, 952 (2001). Once the defendant invokes his right to a speedy trial, and has not been brought to trial within six months, and shows that trial was not postponed on his application, the State then inherits the burden to demonstrate good cause for a court to decline to dismiss the action. *State v. Moore*, 148 Idaho 887, 899, 231 P.3d 532, 544 (Ct. App. 2010).

So how to determine "good cause"? The Idaho Supreme Court in *Clark* held that "a thorough analysis of the reasons for the delay represents the soundest method of determining what constitutes good cause." 135 Idaho at 260, 16 P.3d at 936. There is no "fixed rule," and the reason for the delay "cannot be evaluated in a vacuum." *Id.* And, the standards applicable to speedy trial issues "recognize that pretrial delay is often both inevitable and wholly justifiable." *Moore*, 148 Idaho at 890, 231 P.3d at 545. Indeed, in evaluating the reason for the delay, the court may consider the factors identified in *Barker v. Wingo*, 407 U.S. 514, 530 (1972). Those are (1) the length of the delay; (2) whether the defendant asserted his right to a speedy trial; and (3) the prejudice to the defendant. In other words, in evaluating a motion to dismiss on speedy trial grounds, the court must analyze more than the mere expiration of a six-month period.

Jacobson addressed none of the factors except to argue that the six-month period had elapsed and on that basis alone the matter must be dismissed. However, when the required analysis is conducted, it compels reversal of the Magistrate Court's decision.

**A. Reason for the Delay**

The Magistrate Court correctly found that any delay was not attributable to the prosecution. It was a simple computer programming quirk. And it was a simple computer programming quirk that would not have occurred but for Jacobson's demand that the prosecution file a complaint instead of proceeding on the citation. In evaluating the reason for the delay, courts assign different weights to different reasons. *Moore*, 148 Idaho at 1000, 231 P.3d at 545. For example, while deliberate attempts by the State to delay trial to hamper defense are weighed heavily against the State, a "more neutral reason, such as negligence or overcrowded courts, should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the state rather than with the defendant." *Id.* (citing *Barker*, 407 U.S. at 531); *see also Clark*, 135 Idaho at 261, 16 P.3d at 937.

If negligence is considered a "neutral" reason, the reason here is certainly neutral at worst. The State recognizes that it is the government's duty to bring the defendant to trial within speedy-trial timeframes, and that the court and the prosecution are viewed together as "the government." *State v. Lopez*, 144 Idaho 349, 354, 160 P.3d 1284, 1289 (Ct. App. 2007). But any delay here was not attributable to any of the prosecution's conduct. It was not due to the conduct of court personnel or the judge. It was a computer quirk, something certainly nobody intended. The Court should also consider the context of the reason for the delay. Jacobson

demanded that a complaint be filed and the trial date was set based on the filing of the complaint. Jacobson did not ever object that the filing of the complaint was not filed soon enough. And he demanded a speedy trial before the trial date was set, and then failed to ever object to the trial setting until the day after he thought the six-month period expired. On balance, the reason for the delay should be viewed as sufficient to reverse the Magistrate Court's decision, but if it is not, it must be viewed as sufficiently neutral to inquire into the remaining *Barker* factors. *State v. Hernandez*, 136 Idaho 8, 11, 27 P.3d 417, 420 (Ct. App. 2001).

**B. Length of the Delay**

Using Jacobson's math, let it be assumed for purposes of discussion that the six-month period expired on January 3, 2011. Trial was scheduled for eleven days later, on January 14. This short period is nothing like the substantially longer delays in other cases. *See, e.g., State v. Avila*, 143 Idaho 849, 853, 153 P.3d 1195, 1199 (Ct. App. 2006) (nine-month delay between arrest and trial "not so excessive as to weigh significantly in [the defendant's] favor"); *State v. Hernandez*, 136 Idaho 8, 11, 27 P.3d 417, 420 (Ct. App. 2001) (characterizing eleven-day delay as "relatively short"). Considering that eleven days is so short, the length of the delay should weigh in the State's favor. A response that any amount of time, be it one day beyond the period or eleven, constitutes a meaningful impairment of a defendant's rights does not square with the case law.

**C. Jacobson's Assertion of His Speedy Trial Rights**

Jacobson asserted his right to a speedy trial in a pleading filed on July 9, 2010. (R. pp. 16-17.) It is not enough, however, to simply state that the defendant invoked his right to a

speedy trial and end the inquiry. The manner in which a defendant asserts his right to a speedy trial affects the determination about whether he was in fact denied a speedy trial. *See Barker*, 407 U.S. at 531-32; *Lopez*, 144 Idaho at 354, 160 P.3d at 1289. Indeed, "the import of the defendant's assertion of his or her speedy trial largely relates to the way in which it affects the other *Barker* factors." *State v. Beck*, 128 Idaho 416, 421, 913 P.2d 1186, 1191 (Ct. App. 1996). Here, the notice of trial setting, issued on August 13, set trial for January 14, 2011, but Jacobson did not ever object to that date until January 4, 2011, when he filed his motion to dismiss. This is not a case where the defendant repeatedly asserted his right or objected to the trial date. He sat on his right until it was too late to correct any error in scheduling. If Jacobson were truly concerned about his right to a speedy trial being violated, he could have alerted the court or the State. He did not. So when all the components of the assertion of his right are viewed, while it must be recognized that the defendant asserted his right, the manner in which he did should favor the State.

#### **D. Prejudice**

Prejudice to the defendant is "the most compelling factor" to consider. *Avila*, 143 Idaho at 854, 153 P.3d at 1200. The prejudice inquiry considers the interests of defendants that the speedy-trial rule is designed to protect. *State v. Young*, 136 Idaho at 118, 29 P.3d at 954. Those interests are (1) the prevention of oppressive pretrial incarceration; (2) the minimization of anxiety and concern of the accused; and (3) the limitation of the possibility that the defense will be impaired. *Id.* Jacobson never provided any evidence of any of the factors relating to prejudice, even at the hearing on his motion after this factor had been brought to his attention.

(Tr. p. 2, LL. 25-27.) Courts have warned against a "presumption of prejudice," *State v. McNew*, 131 Idaho 268, 273, 954 P.2d 686, 691 (Ct. App. 1998), and so given the reason for the delay and the shortness of it, the absence of prejudice should compel reversal.

Even if the absence of evidence regarding prejudice is not by itself sufficient to reverse the ruling of the Magistrate Court, based on the facts that are in the record, the eleven-day delay could not have prejudiced Jacobson. There was no oppressive pretrial incarceration to be concerned about; Jacobson had long since been released (June 28) and was otherwise free to roam about the country mostly unrestricted.<sup>1</sup> His license suspension lasted only ninety days from the date of his arrest, and that period expired at the end of September. (R. p. 11.) It is hard to see how eleven more days of a limitation on a person's ability to drink and go to bars is "oppressive." Second, Jacobson offered no evidence of even the existence of any anxiety, let alone the effect of any such anxiety on him. It is difficult to infer any anxiety stemming from the eleven-day period in this case. And finally, Jacobson offered no evidence or even an argument about how the eleven-day delay would have impaired his defense. It is nearly unfathomable how eleven more days could have hampered Jacobson's defense. This is a fairly simple DUI case and the stop was recorded on video and the information relating to the breath test had been recorded. There is no concern of evidence spoilage or disappearing witnesses or fading memories.

Having failed to offer evidence or argument about how the alleged eleven-day appeal has caused him prejudice, Jacobson should not now be permitted present any to this Court on appeal; the time to make his record to support his speedy trial motion was before the Magistrate Court.

---

<sup>1</sup> By "mostly" the State acknowledges the Order of Release, which prohibited Jacobson from possessing or consuming alcohol or visiting bars. (R. p. 15.)



Because he has not shown prejudice by the delay, "a weaker reason for the delay in bringing the defendant to trial will constitute good cause." *State v. Hernandez*, 136 Idaho at 11, 27 P.3d at 420. Without prejudice, dismissal here does not vindicate the interests protected by the speedy trial rule.

\* \* \*

In the end, the balancing the Court must do favors the State. Assuming Jacobson is correct and the six-month period expired on January 3, 2011, the facts and applicable law show that dismissal here solely because that period expired not a fortnight before trial was set effectively favors form over substance. The State and Magistrate Court did not engage in any conduct that could be viewed as intentional or even negligent. When viewed in full context, the reason for the delay is sufficiently neutral to examine the other *Barker* factors. And those factors, too, favor the State. Jacobson asserted his right to a speedy trial before a trial date was set, but never objected to the trial setting until shortly before trial, and after he thought the period expired. Eleven days is a relatively minor delay, and the timing of these eleven days does not add any inconvenience: Would a trial right in the midst of the Christmas and New Year holidays have been better? And most importantly, Jacobson never introduced any evidence of prejudice befalling him due to that short, eleven-day delay. Perhaps that is because he suffered no prejudice, and was not really denied the benefit of any right.

V.

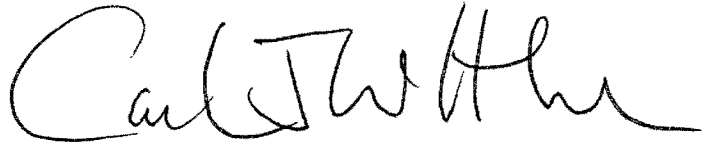
### CONCLUSION

The State respectfully requests that this Court reverse the judgment of the Magistrate

Court and remand to that court with instructions to conduct a trial in this matter.

April 15, 2011.

MOORE SMITH BUXTON & TURCKE, CHARTERED

A handwritten signature in black ink, appearing to read "Carl J. Withroe". The signature is fluid and cursive, with the first name "Carl" being the most prominent.

---

Carl J. Withroe  
City of Stanley Prosecuting Attorney

**CERTIFICATE OF SERVICE**

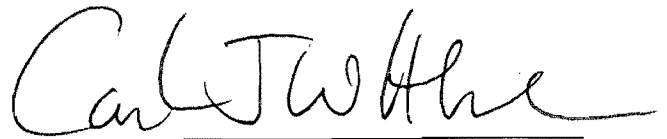
I hereby certify that on this 15<sup>th</sup> day of April, 2011, I did send a true and correct copy of the foregoing document upon the parties listed below via United States mail, first-class, postage prepaid.

Alexander P. McLaughlin  
Davison, Copple, Copple, & Copple, LLP  
P.O. Box 1583  
Boise, ID 83702

(208) 386-6902

Hon. Dane Watkins, Jr.  
605 North Capital Avenue  
Idaho Falls, ID 83402

(208) 529-1300

A handwritten signature in cursive script, reading "Carl J. Withroe", written over a horizontal line.

Carl J. Withroe

2011 APR 19 AM 11:33

Paul J. Fitzer, I.S.B. # 5675

Carl J. Withroe, I.S.B. # 7051  
CITY OF STANLEY PROSECUTING ATTORNEY  
MOORE SMITH BUXTON & TURCKE, CHARTERED  
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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2010-0000316
	)	
v.	)	ORDER AUGMENTING
	)	THE RECORD ON APPEAL
BRETT J. JACOBSON,	)	
	)	
Defendant.	)	

THIS MATTER having come before the court pursuant to the State of Idaho's Motion to Augment the Record, and good cause appearing therefor;

IT IS HEREBY ORDERED that the Notice of Trial Setting issued by the Magistrate Court on August 13, 2010, is hereby added to the record on appeal in this matter.

DATED this 18 day of April, 2011.

  
JUDGE

ORDER AUGMENTING THE RECORD - 1

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order to Continue was served upon the counsel listed below and in the corresponding manner on the 19<sup>th</sup> day of April, 2011.

Carl J. Withroe  
Moore Smith Buxton & Turcke, Chartered  
950 W. Bannock St., Ste 520  
Boise, ID 83702

MAIL  
☒ FACSIMILE  
☐ HAND DELIVERED

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Alexander P. McLaughlin  
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9428

By: Laila Plummer  
Deputy Clerk

ORDER AUGMENTING THE RECORD - 2

2011 APR 25 AM 10:49

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	
Petitioner/Appellant,	)	Case No. CR-2010-316
	)	
-vs-	)	BRIEFING SCHEDULE
	)	AND NOTICE OF TIME
BRETT J. JACOBSON,	)	FOR HEARING ORAL ARGUMENT
	)	
Respondent.	)	
_____	)	

This appeal can be heard as a question of law alone, without necessity of a transcript or trial de novo, pursuant to Rule 83(j)(3), I.R.C.P. The question of law is: SPEEDY TRIAL.

NOW, THEREFORE, you are notified that pursuant to Rule 83(v), I.R.C.P., and Rule 34, I.A.R., appellant's brief must be filed within thirty-five (35) days of the date of this notice; respondent's brief shall be filed within twenty-eight (28) days after service of appellant's brief; and any reply brief shall be filed within twenty-one (21) days after service of respondent's brief.

Oral argument shall be heard on June 15<sup>th</sup>, 2011 at 1:30 p.m. in District Court of the Custer County Courthouse. Oral argument shall be limited to thirty (30) minutes for appellant (including rebuttal argument) and thirty (30) minutes for respondent.

DATED this 25<sup>th</sup> day of April, 2011.

BARBARA C. TIERNEY  
District Court Clerk

By Laila Plummer  
Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that on this 25<sup>th</sup> day of April, 2011, I did send a true and correct copy of the forgoing document upon the parties listed below by the following service:

Carl J. Withroe

Faxed 208.331.1202

Alexander P. McLaughlin

Faxed 208.386.9428

BARBARA C. TIERNEY  
Clerk of the District Court  
Custer County, Idaho

By Laila Plummer  
Deputy Clerk

2011 JUL 11 11:03

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	Case No. CR-2010-0000316
Plaintiff/Appellant	)	
	)	
vs.	)	
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant/Respondent	)	
	)	
	)	

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---

**RESPONDENT'S BRIEF**

---

**Appeal from the District Court of the Seventh Judicial District for the County of Custer**  
**Honorable Charles L. Roos, Magistrate Judge, Presiding**

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
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*Attorney for Defendant/Respondent*

ORIGINAL



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## **I. TABLE OF CASES AND AUTHORITIES**

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## II. STATEMENT OF THE CASE

### A. Nature of the Case

1.) The issue to be resolved on this appeal is whether the Honorable Charles L. Roos erred in granting Defendant's Motion to Dismiss pursuant to I.C. § 19-3501(4) and its constitutional counterparts.

2.) The State contends that the lower court committed error because it did not engage in a balancing analysis of the four (4) factors elucidated by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514 (1972). The State represents that this is the "required analysis." Appellant's Brief, P. 7.

3.) The State's position is analogous to that taken by Justice Sheppard in State v. Hobson, 99 Idaho 200, 579 P.2d 697 (1968). In that case, Justice Sheppard stated that "I believe that this Court has held that the 'balancing test' must be applied" as pertains to I.C. § 19-3501(4). Id. at 204, 579 P.2d at 701.

4.) Unfortunately for the State, Justice Sheppard's comments were contained in his dissenting opinion. In Hobson, the majority of the Court held the exact opposite of what the State contends is the "required analysis." According to the Court:

"The district court mistakenly applied the four-fold balancing test for speedy trial claims enunciated by the United States Supreme Court in *Barker v. Wingo, supra*, in denying appellant's motion to dismiss. This ignores the legislative supplementation of the Idaho constitutional guarantee. I.C. § 19-3501. *Barker v. Wingo, supra*, is not applicable when I.C. § 19-3501 has been violated. The district court should have applied I.C. § 19-3501 and dismissed the action on that basis."

Id. at 202, 579 P.2d at 699.

5.) Based on the foregoing, it is quite easy to see where the State has gone awry. It has mistakenly applied a constitutional analysis, in lieu of a statutory analysis, to determine if I.C. § 19-3501(4) was violated. Under the latter, the Court may look to the factors in Barker only inasmuch as they bear on the reason for the delay. The State's representation that this is the required analysis is incorrect. In any event, once a defendant has proven delay, the burden shifts to the State to prove "good cause," i.e., that "that there was a substantial reason for the delay that rises to the level of a legal excuse." State v. Moore, 148 Idaho 887, 899, 231 P.3d 532, 544 (Ct. App. 2010) ("When a defendant who invokes his statutory speedy trial rights is not brought to trial within six months and shows that trial was not postponed at his request, the burden then shifts to the state to demonstrate good cause for the court to decline to dismiss an action") (emphasis added).

6.) In the instant matter, it is undisputed that the State failed to bring Jacobson to trial within six (6) months/one-hundred and eighty days ("six months") from the date that Jacobson pled not guilty for the first time or the date on which he pled not guilty for a second time and demanded a speedy trial. The cause of the delay had nothing to do with any conduct of Jacobson. The delay was caused by an error committed by the Court's clerk and thus, the Court itself. Apparently, the clerk entered the wrong date from which to calculate speedy trial. Given these facts, it is simply not possible for the State to meet its burden of proving, not just a reason for the delay, but a "substantial reason ... that rises to the level of a legal excuse." Id. at 899, 231 P.3d at 544 (emphasis added). Compounding the difficulties for the State is the fact that

Jacobson specifically asserted his right to speedy trial. When a party does so, the State must come forward with an even “stronger reason” to justify the delay. State v. Clark, 135 Idaho 255, 260, 16 P.3d 931, 936 (2000) (“[I]f the defendant has demanded a speedy trial ... a stronger reason is necessary to constitute good cause”) (emphasis added) (citations omitted).

7.) In light of Jacobson’s specific invocation of his right to a speedy trial, the fact that he quite literally did nothing to cause the delay, and the additional fact that the Court itself admitted to being the source of fault, there is no reason at all to excuse the over six month delay. As stated by the Idaho Supreme Court in State v. Clark, “the reason for the delay lies at the heart of a good cause determination under I.C. § 19-3501.” 135 Idaho at 258, 16 P.3d at 934. It is undisputed that the reason for the delay was an error committed by the Court and not Jacobson. As this is the case, it is also important to remember that “the ultimate responsibility for the delay must rest with the government rather than with the defendant.” State v. McKeeth, 136 Idaho 619, 627, 38 P.3d 1275, 1287 (Ct. App. 2001) (emphasis added) (citations omitted).

8.) For the reasons set forth herein, Jacobson respectfully requests that this Court AFFIRM the decision of the lower court, dismissing all charges brought against Jacobson in the above-captioned matter.

B. Statement of Facts and Course of Proceedings

1.) On or about June 28, 2010, Jacobson was issued citations for Driving Under the Influence (I.C. § 18-8004), Possession of a Controlled Substance (I.C. § 37-2732), and Possession of Drug Paraphernalia (I.C. § 37-2734A(1)).

2.) An arraignment was held on the same day before the Honorable Charles L. Roos.

Jacobson appeared in person and entered a plea of "not guilty" on the record to each of the foregoing charges. No trial date was set at the arraignment.

3.) Thereafter, on July 7, 2010, the undersigned entered a notice of appearance on behalf of Jacobson, entered yet another not guilty plea, and specifically demanded a speedy trial. Jacobson also demanded a sworn complaint.

4.) After the foregoing pleadings were submitted, the Court sent out a Notice of Hearing, which indicated that the trial would occur on January 14, 2011.

5.) Despite entering two (2) not guilty pleas and a formal request for speedy trial, the State failed to bring the Defendant to trial within the timeframe elucidated in I.C. § 19-3501. Specifically, with regard to the first not guilty plea, six months lapsed as of December 26, 2010; regarding the second not guilty plea, six months lapsed as of January 3, 2011. Accordingly, no matter the date from which the six months is calculated, the State is in dereliction of I.C. § 19-3501(4).

6.) On January 4, 2011, Jacobson filed a Motion to Dismiss, an Affidavit of Alexander P. McLaughlin in Support of Motion to Dismiss, and a Memorandum in Support of Motion to Dismiss.

7.) A telephonic hearing on the foregoing motion was held on January 7, 2011. At the foregoing hearing, Judge Roos stated that speedy trial began to commence from June 28, 2010, when Jacobson first entered a plea of not guilty. This would mean that speedy trial ran as of December 26, 2010 – nearly three (3) weeks from the date on which the trial was to be held. The Court then stated that although a criminal complaint was filed, this would not restart speedy

trial.

8.) When a not guilty plea is entered, ISTARS automatically provides a trial date that is within the timeframe for speedy trial. In this instance, the Court entered that date from the time of the sworn complaint – not from when Jacobson twice pled not guilty to the same charges. Why this was the case is somewhat odd as the time of filing a sworn complaint has no bearing on speedy trial. For this reason, the Court took the blame for failing to schedule Jacobson's trial within the required timeframe. Soon thereafter, the Court issued an order dismissing the charges against Jacobson, with prejudice. The State appeals from that order.

### III. ARGUMENT

A. This Court should affirm the decision of the lower court because the State failed to bring charges within six months and has failed to meet its burden of showing a substantial reason for the foregoing delay.

An accused has both a State and Federal Constitutional right to a speedy trial. However, distinct therefrom is I.C. § 19-3501, which is more properly understood as a statutory right of dismissal when the time conditions of the statute are not met.

Because the provision at issue is a statute, resort to statutory interpretation is appropriate. The rules thereof are well established. Paolini v. Albertson's Inc., 143 Idaho 547, 549, 149 P.3d 822, 824 (2006) ("Statutory interpretation begins with the literal language of the statute") (emphasis added); See also Electric Wholesale Supply Co., v. Nielsen, 136 Idaho 814, 825, 41 P.3d 242, 253 (2001) ("[I]t is not for this Court, nor any court, to make or change the law, but to interpret the law as enacted by the legislative branch") (emphasis added) (citations omitted).

As stated, the relevant provision is I.C. § 19-3501(4); it states:

“The court, unless good cause to the contrary is shown ... must order the prosecution or indictment to be dismissed ... [i]f a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.”

I.C. § 19-3501 (emphasis added); See also Rife v. Long, 127 Idaho 841, 848, 908 P.2d 143, 150 (1995) (“When used in a statute, the word ‘may’ is permissive rather than the imperative or mandatory meaning of ‘must’ or ‘shall’”) (emphasis added) (citations omitted).

Based on the text, the import of the foregoing statute is clear. Absent good cause, if an accused is charged with a misdemeanor, the charges must be dismissed if the accused has not been brought to trial within six (6) months from the entry of a plea of not guilty. So much was stated by our Idaho Supreme Court in State v. Clark: “The statute mandates that unless the State can demonstrate ‘good cause’ for a delay greater than six months, the court must dismiss the case.” 135 Idaho at 258, 16 P.3d at 934 (emphasis added).

In the recent case of State v. Moore, our Idaho Court of Appeals elaborated on the meaning of “good cause,” stating that it “means that there was a substantial reason for the delay that rises to the level of a legal excuse.” 148 Idaho at 899, 231 P.3d at 544. In addition to the foregoing, it is worth noting that the safeguards under I.C. § 19-3501 are stricter than their constitutional counterparts. See e.g. Id., 135 Idaho at 258, 16 P.3d at 934 (“[U]nder I.C. § 19-3501, criminal defendants are given additional protection beyond what is required by the United States and Idaho Constitutions”); See also Moore, 148 Idaho at 899, 231 P.3d at 544 (“Since it is a stricter standard, we will address the statutory speedy trial issue”).

In the present case, the charges brought against Jacobson were properly dismissed. The



following reasons substantiate this contention.

*First*, Jacobson established his prima facie case for dismissal. Jacobson's initial not guilty plea was made on June 28, 2010. The State failed to bring Jacobson to trial within six months of the foregoing date. On July 7, 2010, Jacobson entered another not guilty plea and specifically demanded a speedy trial. Again, the State failed to bring the Defendant to trial within six months of July 7, 2010. The State had two opportunities to comply with I.C. § 19-3501 and failed in both instances.

*Second*, there is no good cause to decline to dismiss this action. As stated in State v. Moore, the core analysis for good cause is whether or not there is a "substantial reason for the delay that rises to the level of a legal excuse." Id. In this matter, the record is void of any reason, excuse or justification as to why the State was unable to bring Jacobson to trial within six months. There were no continuances; there was no waiver of speedy trial; Jacobson specifically invoked his constitutional and statutory right to a speedy trial (See e.g. Clark, 135 Idaho at 260, 16 P.3d at 936 (One of the factors that the Court is to consider in determining there is a substantial reason for delay is "whether the defendant asserted the right to a speedy trial")); and the motion to suppress was filed after this matter was set for trial and therefore had no bearing on the trial date. The error was caused by the Court and not Jacobson. As the "ultimate responsibility for the delay must rest with the government rather than with the defendant," dismissal was appropriate and the decision to dismiss the charges against Jacobson should be affirmed. McKeeth, 136 Idaho at 627, 38 P.3d at 1287.

*Third*, the factors contained in Barker v. Wingo are of limited relevance. As mentioned,

the Supreme Court in Hobson specifically stated the following:

“The district court mistakenly applied the four-fold balancing test for speedy trial claims enunciated by the United States Supreme Court in Barker v. Wingo, supra, in denying appellant’s motion to dismiss. This ignores the legislative supplementation of the Idaho constitutional guarantee. I.C. § 19-3501. Barker v. Wingo, supra, is not applicable when I.C. § 19-3501 has been violated. The district court should have applied I.C. § 19-3501 and dismissed the action on that basis.”

Hobson, 99 Idaho at 202, 579 P.2d at 699.

The foregoing statement was softened somewhat by the Court in State v. Clark. In that case, it was stated that the Court “may” look to the Barker factors, but that that they should be:

“considered only as surrounding circumstances ... are important, if at all ... The shortness of the period, the failure of the defendant to demand a speedy trial, and the absence of prejudice are legitimate considerations only insofar as they affect the strength of the reason for delay. This means that, to whatever extent the delay has been a short one, or the defendant has not demanded a speedy trial, or is not prejudiced, a weaker reason will constitute good cause. On the other hand, if the delay has been a long one, or **if the defendant has demanded a speedy trial, or is prejudiced, a stronger reason is necessary to constitute good cause.**”

Clark, at 260, 16 P.3d at 936 (citations omitted).

In the present case, Jacobson specifically demanded a speedy trial. As such, “a stronger reason is necessary to constitute good cause.” Id. There are no compelling facts in the record which satisfy the foregoing standard. The parties agree that the sole cause of the delay was an error committed by the Court, that no continuances were filed or requested, and that the delay in question was as long as three (3) weeks. The foregoing facts are quite benign and certainly do not constitute a “strong[] reason” for justifying the delay in question. The only fact that the State

has pointed to is a lack of prejudice.<sup>1</sup> However, even if true, lack of prejudice alone cannot constitute a “strong reason” to justify a violation of speedy trial. Moreover, lack of prejudice is not something that Jacobson is even required to prove. The above quotation proves the foregoing statement as does our Supreme Court’s statement in Olson v. State, *infra*: “[A] showing of prejudice is not necessary. If the defendant can show unreasonable delay, prejudice is presumed.” 92 Idaho 873, 874, 452 P.2d 764, 765 (1969) (citations omitted).

*Fourth*, State v. Stuart, 113 Idaho 494, 745 P.2d 1115 (Ct. App. 1987) is on point. The sole issue on appeal in Stuart was whether there was good cause under I.C. § 19-3501 to justify the over six month delay in bringing Mary Stuart (“Stuart”) to trial. In that case, the State charged Stuart with conspiracy to deliver a controlled substance. On May 8, 1984, the State filed its information against Stuart. In June, a pre-trial hearing was held and the defense indicated that it would be filing motions to dismiss. The defense, the State, and the District Court all agreed not to set trial until after the motions were resolved. However, after the hearing, Stuart abandoned the motions. The State then moved the Court for a trial setting. At the hearing, the Court scheduled trial for February 25, 1985. Also at the hearing, discussion was had pertaining to a waiver of speedy trial. However, no waiver was ever memorialized and/or executed. In December of 1985, Stuart moved to dismiss the case pursuant to I.C. § 19-3501.

At the hearing on the foregoing motion, the prosecutor attempted to justify the delay by

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<sup>1</sup> The State also argues that the holiday season had an effect on when the trial was set. This argument lacks merit. For one, the trial was set for one (1) day. As such, it could have been easily scheduled in early December or November. Additionally, the predicament of scheduling a trial in the holiday season was self imposed. Jacobson was arrested on June 28, 2010. A trial could have been scheduled in October or November. To set the trial date at the tail end of six months gave the Court little room to maneuver in case of scheduling difficulties. Again, that was not Jacobson’s fault, but the Court’s.

stating that he had a heavy workload and that there was a change in judges in the case. The defense was then asked if he had been prejudiced by the delay. Counsel responded that there was no prejudice and that prejudice was not required to be proven under I.C. § 19-3501. The Court stated that good cause had been shown due to the defense's failure to follow up on the motions it abandoned. Stuart appealed.

On appeal, the Court of Appeals reversed the decision of the lower court. According to the Court:

"The delay here was not created by Stuart. Abandoning a motion is not tantamount to good cause for the delay. The reasons for delay asserted by the state [increased workload], were properly rejected by the district court. While we can appreciate the district court's reliance on the representation that would be pursued, we cannot understand why trial was not scheduled when it became clear that the motions had been abandoned. The six month time limitation for speedy trial under I.C. § 19-3501 does not represent a whimsical timeframe. It is designed to accommodate a reasonable number of pretrial motions ... Trial courts must be diligent in securing compliance with time restraints. It is the court's duty to arrange for trial ... We conclude that the court erred in failing to dismiss the action."

Id. at 496, 745 P.2d at 1117.

No facts exist in the case at bar that vaguely resemble those in Stuart. There was no agreement that the parties would delay setting trial until after certain motions were heard; there was no abandonment of such motions; there were no questionable waivers of speedy trial; there was no assertion that the prosecutor had a heavy workload; and there was no switching of presiding judges. In short, there is nothing in the instant matter close to those circumstances present in Stuart. If the facts of Stuart did not constitute good cause, it is jurisprudentially impossible that the facts of this case mandate reversal of Judge Roos's order of dismissal.

*Fifth*, the fact that a sworn complaint was demanded is not relevant and does not restart the time period for calculating speedy trial. For one, the sworn complaint did not add any new offenses and Jacobson already twice pled not guilty to the charges contained in the misdemeanor citations, with his first plea occurring in open court at Jacobson's arraignment. Moreover, speedy trial is not concerned with the time that a complaint is filed. It is concerned solely when an individual first pleads not guilty. As such, for purposes of determining speedy trial, the time a formal complaint is filed is superfluous. Thus, the fact that Jacobson asked for a sworn complaint was of no significance vis-à-vis speedy trial analysis.

Additionally, the State puts too much stock into the function of a complaint. In the typical case, a sworn complaint is requested simply to isolate the charges and the acts alleged to constitute a violation of the relevant code provisions. Often times, complaints are provided as late as the day of trial. A party is not required to enter an additional plea in response if they have already pled not guilty to a charging document, such as a citation. See Misdemeanor Criminal Rule ("MCR") 3 ("A person may be charged and brought before a court for any citable offense upon the filing of an Idaho Uniform Citation"). Moreover, if the case were that a sworn complaint could restart speedy trial, a prosecutor in any case in which the defendant was charged by citation could simply issue a sworn complaint and thereby restart the clock for speedy trial. This would eviscerate I.C. § 19-3501 and the constitutional guarantees of a right to a speedy trial. Perhaps this is why our Court of Appeals stated that "the time limitation [for speedy trial] is not renewed absent a formal dismissal and refiling of the original charges." McKeeth, 136 Idaho at 627, 38 P.3d at 1283.

*Sixth*, the fact that Jacobson filed an extension of time to file pre-trial motions does not constitute any sort of waiver of Jacobson's right to a speedy trial. An extension of time to file motions does not push out the time period by which a trial is to occur. It simply allows for additional time to examine discovery to adequately set forth potential motions to suppress or motions in limine. It has no bearing on the trial date. Moreover, since ISTARS automatically provides a trial date irrespective of such a motion, it is impossible that Jacobson's motion had any bearing on when the trial date was actually set. In fact, as the cause of the delay was the fact that the Court clerk entered the wrong day from which to start speedy trial, it is undisputed that Jacobson's motion had no bearing on the date on which the Court set the trial.

*Seventh*, the fact that the Motion to Dismiss was filed within the timeframe by which pre-trial motions were to be filed is not significant. I.C. § 19-3501(4) states that charges must be dismissed if the State fails to bring a defendant to trial within six months of the entry of a plea of not guilty. Its constitutional counterpart says roughly the same. The lower court's trial order stated that pre-trial motions must be filed within twenty (20) days of the trial. The State argues that because Jacobson did not submit his motion in advance of the cut-off date, the motion should not have been heard. This is incorrect. First, the State's argument would have the effect of having Judge Roos's trial order trump legislative and constitutional directive, both at the state and federal level. This aggrandizes court orders over state and federal constitutional law. In addition, if statutes and the constitution had to cede to trial orders, this would be a *de facto* amendment of I.C. § 19-3501(4). The net effect would be that a party could assert his right to a speedy trial only if: A.) The six (6) months lapsed and; B.) If filing a motion to dismiss did not

violate the trial court's trial/scheduling order. This is not the law of the state and cannot have been the intent of the drafters. As such, the State's argument lacks merit.

#### **IV. CONCLUSION**

Jacobson respectfully requests that this Court AFFIRM the Order Granting Motion to Dismiss.

DATED this 25<sup>th</sup> day of April, 2011.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: \_\_\_\_\_

Alexander P. McLaughlin, of the firm

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25<sup>th</sup> day of April, 2011, I caused to be served a true and accurate copy of the foregoing instrument via hand delivery to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702  
(208) 331-1202

\_\_\_\_\_  
Alexander P. McLaughlin

2011 MAY 19 11:11:00

Paul J. Fitzer, I.S.B. # 5675  
Carl J. Withroe, I.S.B. # 7051  
CITY OF STANLEY PROSECUTING ATTORNEY  
MOORE SMITH BUXTON & TURCKE, CHARTERED  
950 West Bannock Street, Suite 520  
Boise, Idaho 837002  
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Facsimile: (208) 331-1202  
E-Mail: [cjw@msbtlaw.com](mailto:cjw@msbtlaw.com)

Attorneys for Plaintiff-Appellant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO, )  
)  
Plaintiff-Appellant, )  
)  
v. )  
)  
BRETT J. JACOBSON, )  
)  
Defendant-Respondent. )  
\_\_\_\_\_ )

Case No. CR-2010-0000316

**APPELLANT'S REPLY BRIEF**



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I.

INTRODUCTION

The parties agree that the question is whether there exists “good cause” for the delay in bringing Jacobson to trial in this case. The parties disagree about not only the result of that issue, but also the inquiry to resolve it. The State contends that the delay in this case, an eleven-day period that all involved understand was attributable to a quirk in the court’s trial-scheduling computer program, is sufficiently neutral to trigger inquiry into the factors identified in *Barker v. Wingo*, 407 U.S. 514 (1972), which our Supreme Court has endorsed in cases under I.C. § 19-3501. *See State v. Clark*, 135 Idaho 255, 16 P.3d 931 (2000). When those factors are evaluated, the State posits, good cause for the delay exists: The length of the delay was fairly short, and though Jacobson demanded his speedy trial rights, he was not prejudiced by that short delay.

Jacobson, on the other hand, claims that the *Barker v. Wingo* factors are of “limited relevance” and that it is “impossible” that good cause exists here. While the State’s argument involves the analysis of the *Barker v. Wingo* factors, Jacobson says there is no need for such analysis here. Under the statute, he says, the computer programming quirk, by itself, is not good cause, prejudice is presumed, and the inquiry is at an end. For support, Jacobson relies primarily on two cases, neither of which retains viability in light of *Clark*. In the end, Jacobson ignores the fact that the reason for the delay cannot be evaluated entirely in a vacuum, and perhaps for good reason: When the reason for the delay is evaluated in its proper context, good cause does exist, and this matter should be remanded for trial.

## II.

### ARGUMENT

Jacobson downplays the *Barker v. Wingo* factors and urges the Court to consider two points: (1) he demanded his speedy trial rights; and (2) the cause for the delay—the computer programming quirk—cannot constitute “good cause.” The State does not dispute the fact that Jacobson demanded his speedy trial rights.<sup>1</sup> The primary issue for resolution, therefore, is how to evaluate the reason for the delay. Jacobson offers *State v. Hobson*, 99 Idaho 200, 579 P.2d 697 (1968), and *State v. Stuart*, 113 Idaho 494, 745 P.3d 1115 (Ct. App. 1987), as support for his argument. In *Hobson*, the Supreme Court’s remittitur issued in July 1974, the defendant moved to dismiss on speedy trial grounds that September, a hearing on that motion was heard in March 1975, and trial occurred in July 1975. 99 Idaho at 201, 579 P.2d at 698. The State argued to the Supreme Court that the cause for the delay was confusion about noticing the defendant’s motion for hearing, but the Court was unimpressed, noting that the State had been apprised of the speedy trial issue in September 1974. *Id.* at 202, 579 P.2d at 699. Importantly, the Court specifically held that *Barker v. Wingo* is not applicable when I.C. § 19-3501 has been violated. *Id.*

*State v. Stuart*, Jacobson says, is “on point.” In *Stuart* it had been agreed that trial would not be set until after pretrial motions had been resolved. 113 Idaho at 494-95, 745 P.2d at 1115-16. The defendant eventually abandoned her motions, and the oral argument date on the motions, August 9, 1984, passed with no activity on those motions. *Id.* at 496, 745 P.2d at 1117.

---

<sup>1</sup> Of course, the context in which Jacobson asserted his speedy trial rights should be considered. The trial setting issued on August 13, 2010 and Jacobson never objected to that date or asserted his right to a speedy trial after the scheduling order issued until he filed the motion to dismiss.

Nothing occurred with respect to scheduling trial until late September, when the prosecutor requested a trial setting. *Id.* No trial date was even set until November 8, 1984. *Id.* Trial was set for February 1985. *Id.* at 495, 745 P.2d at 1116. The State's assertion of good cause, the defendant's abandonment of her pretrial motions, was not sufficient to the Court. The Court said that by August 10, the district court should have been aware that the motions had been abandoned and trial should have been set then. *Id.* at 496, 745 P.2d at 1117. The court could not "understand why trial was not scheduled when it became clear that the motions had been abandoned." *Id.* Since it was operating under the rule in *Hobson*, the court did not evaluate the *Barker v. Wingo* factors.

Jacobson's argument lives in a time that no longer exists. That time was before the Idaho Supreme Court issued *Clark* at the turn of this century. Jacobson says that the Court in *Clark* "softened" *Hobson* "somewhat." Br. for Resp't. at 11. That is certainly one way to put it. The other way to put it is that the Court specifically resolved any uncertainty about the role of the *Barker v. Wingo* factors in evaluating claims under I.C. § 19-3501 and expressly endorsed an approach that considered those factors to the extent that they had bearing on the sufficiency of the reason for the delay. *State v. Clark*, 135 Idaho at 260, 16 P.3d at 936. *Hobson*, of course, held that the *Barker v. Wingo* factors were not applicable under I.C. § 19-3501, and *Stuart* was decided in a time when *Hobson* controlled. In cases where the *Barker v. Wingo* factors are not used, the "good cause" analysis was informed by a smaller universe of facts. However, following *Clark*, the "good cause" inquiry is much more than examining who caused the delay and whether the six-month period has passed. *See State v. Young*, 136 Idaho 113, 116, 29 P.3d

949, 952 (2001) (“The analysis of whether there was good cause is not simply a determination of who was responsible for the delay and how long the case has been pending”).

Indeed, there is no “fixed rule” for determining good cause, and the reason for the delay “cannot be evaluated in a vacuum.” *Clark*, 135 Idaho at 260, 16 P.3d at 936. And we know that different reasons for delay are assigned different weights. *See, e.g., State v. Moore*, 148 Idaho 887, 1000, 231 P.2d 532, 545 (Ct. App. 2010). Neutral reasons, like overcrowded courts or even negligence are weighed less heavily against the State than delays occasioned by, say, more deliberate attempts by the State to hamper the defense. *Id.* We know also that short delays and the absence of prejudice to the defendant will mean that “a weaker reason for the delay in bringing the defendant to trial will constitute good cause for purposes of I.C. § 19-3501.” *State v. Hernandez*, 136 Idaho 8, 11, 27 P.3d 417, 420 (Ct. App. 2001). Here, of course, the reason for the delay is best characterized as neutral, the eleven-day delay is fairly short, and Jacobson did not argue or demonstrate any prejudice—the most important factor of all.

Still, Jacobson points to *Stuart*, and claims our facts here are nothing like Ms. Stuart’s facts, and declares that if her facts did not constitute good cause, “it is jurisprudentially impossible” that the facts here do. Br. for Resp’t. at 13. Jacobson’s reliance on *Stuart* invites this Court to travel back in time to a world pre-dating *Clark*, and essentially asks the Court to ignore the neutral nature of the delay, to ignore the short period of time that passed beyond the speedy-trial date, and to ignore the complete lack of prejudice to him. His argument simply does not square with the guidelines established by our appellate courts.

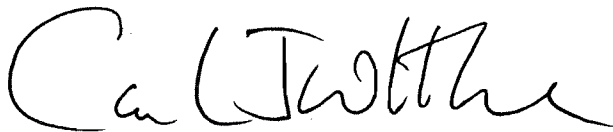
**III.**

**CONCLUSION**

The State respectfully requests that this Court reverse the judgment of the Magistrate Court and remand to that court with instructions to conduct a trial in this matter.

May 17, 2011.

MOORE SMITH BUXTON & TURCKE, CHARTERED

A handwritten signature in black ink, appearing to read "Carl J. Withroe". The signature is fluid and cursive, with a large initial "C" and "W".

---

Carl J. Withroe  
City of Stanley Prosecuting Attorney

**CERTIFICATE OF SERVICE**

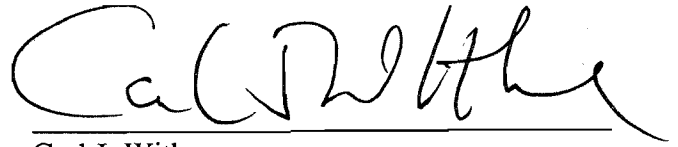
I hereby certify that on this 17<sup>th</sup> day of May, 2011, I did send a true and correct copy of the foregoing document upon the parties listed below via the method indicated below, and addressed to the following:

Alexander P. McLaughlin  
Davison, Copple, Copple, & Copple, LLP  
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*Attorney for Respondent*

☒ Mailed  
☒ Facsimile: (208)386-6902  
☐ Hand-delivered  
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Hon. Dane Watkins, Jr.  
605 North Capital Avenue  
Idaho Falls, ID 83402

☒ Mailed  
☐ Facsimile: (208)529-1300  
☐ Hand-delivered

  
\_\_\_\_\_  
Carl J. Withroe



CLERK OF DISTRICT COURT  
IDAHO  
JULIA P. SUMNER  
2011 MAY 31 PM 12:23

THOMAS E. DVORAK (ISB No. 5043)  
ALEXANDER P. MCLAUGHLIN (ISB No. 7977)  
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Attorneys for Defendant  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff/Appellant,	)	
	)	NOTICE OF SUBSTITUTION OF
vs.	)	COUNSEL
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant/Respondent.	)	
_____	)	

PLEASE TAKE NOTICE that Alexander P. McLaughlin of GIVENS PURSLEY LLP, 601 West Bannock Street, P. O. Box 2720, Boise, Idaho 83702 (telephone 208-388-1200) is substituted as counsel of record for Brett J. Jacobson, in place of Davison, Copple, Copple & Copple, LLC in

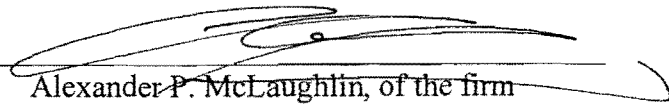
the above-entitled action. Please direct all correspondence and pleadings to the firm at the following address:

Alexander P. McLaughlin, ISB #7977  
Givens Pursley LLP  
601 W. Bannock Street  
P.O. Box 2720  
Boise, Idaho 83701-2720  
Telephone: 208-388-1200  
Facsimile: 208-388-1300  
alexmcLaughlin@givenspursley.com

DATED this 2<sup>nd</sup> day of May, 2011.

GIVENS PURSLEY LLP

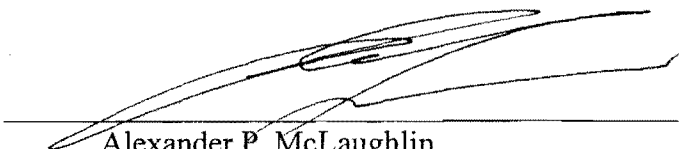
By: \_\_\_\_\_

  
Alexander P. McLaughlin, of the firm  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27 day of May, 2011, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702



Alexander P. McLaughlin

RUTH BRUNKER  
2011 JUN -5 PM 2:04

THOMAS E. DVORAK (ISB No. 5043)  
ALEXANDER P. MCLAUGHLIN (ISB No. 7977)  
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[alexmclaughlin@givenspursley.com](mailto:alexmclaughlin@givenspursley.com)

Attorneys for Defendant/Respondent  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff/Appellant,	)	
	)	MOTION TO APPEAR
vs.	)	TELEPHONICALLY
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant/Respondent.	)	
_____	)	

\*\*\*

COMES NOW Defendant/Respondent Brett J. Jacobson, by and through his attorneys of record, Thomas E. Dvorak and Alexander P. McLaughlin, of the firm Givens Pursley LLP, and hereby move this Court for entry of the attached Order Granting Motion to Appear Telephonically.

MOTION TO APPEAR TELEPHONICALLY - 1

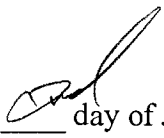
By the foregoing order, Mr. Jacobson requests that this Court permit the undersigned to appear telephonically at the oral argument regarding the State's appeal of the magistrate judge's Order Granting Motion to Dismiss. The hearing is currently set for June 15, 2011. This motion is made on the following grounds:

1.) Mr. Jacobson is not in a position financially to pay for the costs of travel. The undersigned is a close friend of the Defendant. Accordingly, the undersigned agreed to take on the initial matter free of charge. However, because of the appeal, the costs and expenses became too high to continue representation on a voluntary basis. Mr. Jacobson does not have much by way of financial resources and any manner by which costs could be lowered must be taken;

2.) Opposing counsel has been contacted and has indicated that he has no objection to a telephonic appearance; and

3.) The matters which will be argued have been comprehensively briefed by the parties and the issues contained therein are not complex.

This motion is based on the records and files herein. Oral argument is not requested on this motion.

DATED this  day of June, 2011.

GIVENS PURSLEY LLP

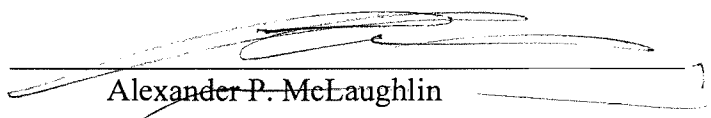
By: 

Alexander P. McLaughlin, of the firm  
Attorneys for Defendant/Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of June, 2011, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702

  
Alexander P. McLaughlin

2011 JUN -7 11:23

THOMAS E. DVORAK (ISB No. 5043)  
ALEXANDER P. MCCLAUGHLIN (ISB No. 7977)  
GIVENS PURSLEY LLP  
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[ted@givenspursley.com](mailto:ted@givenspursley.com)  
[alexmcclaughlin@givenspursley.com](mailto:alexmcclaughlin@givenspursley.com)

Attorneys for Defendant/Respondent  
Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	Case No. CR-2010-0000316
	)	
Plaintiff/Appellant,	)	
	)	ORDER GRANTING MOTION
vs.	)	TO APPEAR TELEPHONICALLY
	)	
BRETT J. JACOBSON,	)	
	)	
Defendant/Respondent.	)	
_____	)	

THIS MATTER having come regularly before the Court on Defendant/Respondent Brett J. Jacobson's Motion to Appear Telephonically, and the Court having considered the foregoing motion, and the arguments contained therein, and good cause appearing therefor;

ORDER GRANTING MOTION TO APPEAR TELEPHONICALLY - 1

IT IS HEREBY ORDERED that Jacobson's Motion to Appear Telephonically is GRANTED.

Defense counsel shall make all arrangements necessary to effectuate the foregoing appearance.

DATED this 7 day of June, 2011.

  
JUDGE DANE WATKINS

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of June, 2011, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke  
950 West Bannock, Suite 520  
Boise, Idaho 83702

Alexander P. McLaughlin  
Givens Pursley LLP  
P O Box 2720  
Boise, ID 83701

  
Clerk of the Court



PAUL J. FITZER, ISB No. 5675  
CARL J. WITHROE, ISB No. 7051  
MOORE SMITH BUXTON & TURCKE, CHARTERED  
Attorneys at Law  
950 W. Bannock Street, Suite 520  
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Telephone: (208) 331-1800  
Facsimile: (208) 331-1202

2011 JUN -9 PM 3:43

Attorneys for Plaintiff

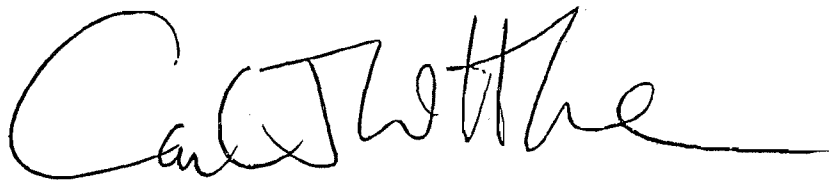
IN THE DISTRICT COURT FOR THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	
	)	Case No. CR-2010-0000316
v.	)	
	)	MOTION FOR TELEPHONIC
BRETT J. JACOBSON,	)	HEARING
	)	
Defendant/Respondent.	)	

COMES NOW, the Plaintiff, by and through its attorneys of record, Carl J. Withroe of Moore Smith Buxton & Turcke, Chtd., and hereby request that the hearing currently scheduled for June 15<sup>th</sup>, 2011 at 1:30 p.m. be held telephonically.

Dated this 9<sup>th</sup> day of June, 2011.

MOORE SMITH BUXTON &amp; TURCKE, CHTD.



Carl J. Withroe  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that on this 9th day of June, 2011, I caused to be served a true and correct copy of the foregoing **MOTION FOR TELEPHONIC HEARING** by the method indicated below, addressed to the following:

Thomas E. Dvorak  
Alexander P. McLaughlin  
Givens Pursley, LLP  
PO Box 2720  
Boise, ID 83701

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☐ via Hand Delivery  
☐ via Overnight Delivery  
☒ via Facsimile: (208) 388-1300

Hon. Dane Watkins, Jr.  
605 North Capital Avenue  
Idaho Falls, ID 83402

☐ via U.S. Mail  
☐ via Hand Delivery  
☐ via Overnight Delivery  
☒ via Facsimile: (208) 529-1300

  
Carl J. Withroe

PAUL J. FITZER, ISB No. 5675  
 CARL J. WITHROE, ISB No. 7051  
 MOORE SMITH BUXTON & TURCKE, CHARTERED  
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 Telephone: (208) 331-1800  
 Facsimile: (208) 331-1202

RUTH BRUNKER  
 2011 JUN 14 AM 9:46

Attorneys for Plaintiff

**IN THE DISTRICT COURT FOR THE SEVENTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER**

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	
	)	Case No. CR-2010-0000316
v.	)	
	)	ORDER FOR TELEPHONIC
BRETT J. JACOBSON,	)	HEARING
	)	
Defendant/Respondent.	)	

BASED UPON the Plaintiff's Motion for Telephonic Hearing for the hearing currently set for June 15, 2011, at 1:30 p.m., in good cause appearing, and the Court deeming itself fully advised,

IT IS HEREBY ORDERED that the hearing on June 15, 2011 at 1:30 p.m. shall be held telephonically in the above entitled matter.

Dated this 14 day of June, 2011.

Honorable Dane Watkins, Jr.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14 day of June, 2011, I caused to be served a true and correct copy of the foregoing **ORDER FOR TELEPHONIC HEARING** by the method indicated below, addressed to the following:

Carl J. Withroe  
Moore Smith Buxton & Turcke, Chtd.  
950 W. Bannock, Suite 520  
Boise, ID 83702

☐ via U.S. Mail  
☐ via Hand Delivery  
☐ via Overnight Delivery  
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Thomas E. Dvorak  
Alexander P. McLaughlin  
Givens Pursley, LLP  
PO Box 2720  
Boise, ID 83701

☐ via U.S. Mail  
☐ via Hand Delivery  
☐ via Overnight Delivery  
☒ via Facsimile: (208) 388-1300

Ruth Brundage  
Clerk

CUSTER COUNTY  
2011 JUN 16 AM 11:57  
*R Brunker*

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

CR-2010-0000316

State of Idaho vs. Brett J Jacobson

Hearing type: Oral Argument

Hearing date: 6/15/2011

Time: 1:30 pm

Judge: Dane Watkins Jr.

Court reporter: Sandra Beebe

Minutes Clerk: Ruth Brunker

Defense Attorney: Alexander McLaughlin

Prosecutor: Carl Withroe

COURT MINUTES

Mr. Withroe and Mr. McLaughlin appeared telephonically.

Both attorneys gave oral argument to the Court.

The Court will take under advisement and issue a decision.

Dated and done this 16<sup>th</sup> day of June 2011.

*Ruth Brunker*  
Ruth Brunker, Deputy Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on June 16, 2011 a true and correct copy of the foregoing was served by the method indicated below and addressed to each of the following:

Carl Withroe, Esq.

Fax: 208 388-1300

Alexander P. McLaughlin, Esq.

Fax: 208 331-1202

  
\_\_\_\_\_

Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CUSTER.

STATE OF IDAHO, )  
 )  
Plaintiff/Appellant, )  
 )  
vs. )  
 )  
BRETT J JACOBSON, )  
 )  
Defendant/Respondent. )  
\_\_\_\_\_ )

Case No. CR-2010-316

**MEMORANDUM DECISION RE:**

**APPEAL**

**FILED IN CHAMBERS**

at Idaho Falls

Bonneville County

Honorable Judge Watkins

Date July 6, 2011

Time 1:30pm

Deputy Clerk JME

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On the evening of June 26, 2010, Brett Jacobson (hereafter, "Defendant") was stopped by Idaho State Police Trooper Ken Beckner (hereafter, "Beckner") while operating a motor vehicle in Stanley, Idaho. Two days later, on June 28, 2010, based upon suspicion of driving under the influence, Beckner issued an Idaho Uniform Citation charging Defendant with Driving Under the Influence, I.C. § 18-8000. The Defendant received a second citation charging him with Possession of Marijuana, I.C. § 37-2732(c)(3) and Possession of Paraphernalia, I.C. § 37-2734A.

That same day, the Defendant was arraigned before the Honorable Magistrate Charles L. Roos where the Defendant appeared in person and entered a plea of "not guilty" to each of the charges (hereafter "Defendant's First Appearance"). The Court ordered the Defendant to be released on his own recognizance. The Minute Entry and Order from the June 28, 2010 hearing does not indicate that a jury trial was scheduled at that time.

On July 9, 2010, the Defendant filed a Notice of Appearance; Entry of Not Guilty Plea; Demand for Speedy Trial; and Demand for Sworn Complaint. (hereafter, "Defendant's Second

Appearance”). The Defendant also filed a Motion for Extension of Time for Filing Pre-Trial Motions and a Defendants Request for Discovery to Plaintiffs.

On August 2, 2010, the State filed a Criminal Complaint alleging the same charges as in the Uniform Citations.

On August 13, 2010, the Defendant filed a second Notice of Appearance; Entry of Not Guilty Plea; Demand for Speedy Trial; and Demand for Sworn Complaint.

That same day, the Court issued its Notice of Trial for January 14, 2011. The Magistrate’s Pretrial Order required that pretrial motions be filed within twenty-one (21) days of trial.

On January 4, 2011, Defendant filed a Motion to Dismiss asserting that his constitutional and statutory rights to a speedy trial had been violated.

On January 7, 2011, the magistrate court conducted a telephonic hearing on the Motion to Dismiss.<sup>1</sup> Following the hearing, the Court issued an Order of Dismissal.

On February 16, 2011, the State filed this Appeal. The State filed Appellant’s Brief on April 18, 2011. Defendant filed Respondent’s Brief on April 27, 2011. The State filed Appellant’s Reply Brief on May 19, 2011. This Court heard oral argument on June 15, 2011.

## **II. STANDARD OF REVIEW**

Idaho Criminal Rule 54.17 provides in part:

The scope of appellate review on appeal to the district court shall be as follows:

- (a) Upon an appeal from a magistrate to the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards

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<sup>1</sup> The record does not contain a notice of the hearing on the Motion to Dismiss. At the hearing, the Court stated, “I thought we ought to hear this now since I’m going on vacation next week . . . .” Hearing on Motion to Dismiss at 2. It appears, because of the need to hear the issue prior to the trial, no briefing accompanied the parties oral arguments.



of review as an appeal from the district court to the Supreme Court under the Idaho appellate rules.

### III. DISCUSSION

The Magistrate found Defendant's right to a speedy trial had been violated. The Court reasoned that the software, used by Idaho Courts (hereafter "ISTARS"), automatically provided a speedy trial date based upon the date of Defendant's Second Appearance rather than the date of Defendant's First Appearance. The magistrate stated, "I do not blame this at all on Mr. Withroe, uh, frankly, it was just a matter of how it got entered in ISTARS, and then, it was set what we thought, was within the six month time frame." Motion to Dismiss at 4.

The right to a speedy trial is guaranteed by the sixth amendment to the United States Constitution and by article 1, section 13 of the Idaho Constitution. Idaho's guarantee of a speedy trial is augmented by statute. Idaho Code § 19-3501 provides:

The Court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

(2) If a defendant, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the information is filed with the court;

....

(4) If a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

Whether there was an infringement of Defendant's statutory right to a speedy trial presents a mixed question of law and fact. The Court will defer to the magistrates findings of fact if they are supported by substantial and competent evidence. *State v. Clark*, 135 Idaho 255, 257, 16 P. 3d 931, 933 (2000). The Court, however, exercises free review of the trial court's

conclusions of law. *Id. See Clements Farms, Inc. v. Ben Fish and Son*, 120 Idaho 185, 188, 814 P.2d 917, 920 (1991).

The burden is on the state to show good cause for the delay. *State v. Hobson*, 99 Idaho 200, 579 P.2d 697 (1978). If there is no good cause for the delay, or if the trial was not postponed at the defendant's request, then the charge against the accused must be dismissed and the inquiry is at an end. *State v. Dillard*, 110 Idaho 834, 718 P.2d 1272 (Ct. App. 1986), *cert. denied*, 479 U.S. 887, 107 S.Ct. 283, 93 L.Ed.2d 258 (1986).

Good cause means a substantial reason; one that affords a legal excuse. *State v. Churchill*, 82 Ariz. 375, 313 P.2d 753 (1957). In *State v. Moore*, 148 Idaho 887, 231 P.3d 532 (Ct. App. 2010), the Idaho Court of Appeals recently addressed the factors that courts use to evaluate whether a particular defendant has been deprived of his speedy trial right:

Analysis of whether there was good cause for a statutory speedy trial violation is not simply a determination of who was responsible for the delay and how long the case has been pending. *Young*, 136 Idaho at 116, 29 P.3d at 952. Rather, the analysis should focus upon the reason for the delay. *Id.* But the reason for the delay cannot be evaluated entirely in a vacuum and a good cause determination may take into account the additional factors listed in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101, 117 (1972). *See Clark*, 135 Idaho at 260, 16 P.3d at 936. Thus, insofar as they bear on the sufficiency or strength of the reason for the delay, a court may consider (1) the length of the delay; (2) whether the defendant asserted the right to a speedy trial; and (3) the prejudice to the defendant. However, the reason for the delay lies at the heart of a good cause determination under I.C. § 19-3501. *Id.*

*Id.* at 899, 231 P.3d at 544.

#### **A. Reason for the Delay**

In evaluating the reason for the delay, different weights are assigned to different reasons. *United States v. Loud Hawk*, 474 U.S. 302, 315, 106 S.Ct. 648, 656, 88 L.Ed.2d 640, 654 (1986); *State v. Davis*, 141 Idaho 828, 837, 118 P.3d 160, 169 (Ct. App. 2005). In *Moore*, the Idaho Court of Appeals stated the following:

We attach great weight to considerations such as the state's need for time to collect witnesses, oppose pretrial motions, or locate the defendant in the event that he or she goes into hiding. *Id.* A valid reason, such as a missing witness, should serve to justify appropriate delay. *Barker*, 407 U.S. at 531, 92 S.Ct. at 2192, 33 L.Ed.2d at 117. However, there is an enormous difference between being inconvenienced and being unavailable. *Clark*, 135 Idaho at 260, 16 P.3d at 936; *Davis*, 141 Idaho at 837, 118 P.3d at 169. True unavailability suggests an unqualified inability to attend, while inconvenience merely implies that attendance at trial would be burdensome. *Id.*

A deliberate attempt to delay the trial in order to hamper the defense should be weighed heavily against the state. *Barker*, 407 U.S. at 531, 92 S.Ct. at 2192, 33 L.Ed.2d at 117; *Davis*, 141 Idaho at 837, 118 P.3d at 169.

*Moore*, at 900, 231 P.3d at 545.

The Idaho Court of Appeals stated the following regarding neutral reasons for delay:

[N]egligence or overcrowded courts, should be weighed less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the state rather than with the defendant. *Barker*, 407 U.S. at 531, 92 S.Ct. at 2192, 33 L.Ed.2d at 117; *Davis*, 141 Idaho at 837, 118 P.3d at 169; *State v. Wavrick*, 123 Idaho 83, 89, 844 P.2d 712, 718 (Ct. App. 1992). While not compelling relief in every case where a bad-faith delay would make relief virtually automatic, neither is negligence automatically tolerable simply because the accused cannot demonstrate exactly how it has prejudiced him or her. *Doggett*, 505 U.S. at 657, 112 S.Ct. at 2693, 120 L.Ed.2d at 531-32; *Davis*, 141 Idaho at 837-38, 118 P.3d at 169-70. Although negligence is weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution. *Id.*

*Id.*

The duty to bring a defendant to trial lies with the State, not the defendant. *Barker*, 407 U.S. at 527, 92 S.Ct. at 2190, 33 L.Ed.2d at 114-15; *Davis*, 141 Idaho at 838, 118 P.3d at 170. *State v. Hobson*, 99 Idaho 200, 202, 579 P.2d 697, 699 (1978). The prosecution and the trial court have the primary burden to ensure that cases are brought to trial in a timely manner. *Barker*, 407 U.S. at 529, 92 S.Ct. at 2191, 33 L.Ed.2d at 116.

*State v. Lopez*, 144 Idaho 349, 354, 106 P.3d 1284, 1289 (Ct. App. 2007).

The Magistrate found the delay in this case was attributable to the court using an incorrect starting date to calculate the six month speedy trial date. The record does not reflect any other reason for the delay.<sup>2</sup>

On appeal, the State argues Defendant failed to object to the Complaint being untimely filed. However, whether the Complaint was timely filed is irrelevant because, as the Magistrate noted in its ruling on the Motion to Dismiss, the running of the speedy trial began upon Defendant's First Appearance.<sup>3</sup>

Under the Sixth Amendment, the period of delay is measured from the date there is "a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge." *United States v. Marion*, 404 U.S. 307, 320, 92 S.Ct. 455, 463, 30 L.Ed.2d 468, 478 (1971). Under the Idaho Constitution, the period of delay is measured from the date formal charges are filed or the defendant is arrested, whichever occurs first. *Young*, 136 Idaho at 117, 29 P.3d at 953; *State v. Stuart*, 110 Idaho 163, 173, 715 P.2d 833, 844 (1985), *overruled and abrogated on other grounds by State v. Tribe*, 123 Idaho 721, 724, 852 P.2d 87, 90 (1993).

The State further argues that Defendant never objected to the trial setting. As stated in *Davis and Barker, supra*, the duty to bring a defendant to trial lies with the State, not the defendant. Moreover, the Defendant invoked his constitutional and statutory right to a speedy trial on July 9, and August 13, 2010.

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<sup>2</sup> The Court acknowledges that based upon the above authority, great weight should be given to the state's need for time to oppose pretrial motions. Two motions to suppress were filed in this case by the Defendant. However, one motion was withdrawn and the other was heard early enough in the proceedings that it did not result in a delay or a continuance of the trial.

<sup>3</sup> The magistrate stated at the hearing, "He then had his initial arraignment on these three counts on 6/28 of 2010, and entered pleas of not guilty. That would start the running of the six months in accordance with the statute and the case law as I've reviewed it. On 7/9 of 2010, Mr. MacLaughlin appears in writing, enters a plea of not guilty, I don't think that supersedes the original not guilty plea according to law." Motion to Dismiss at 3.

It is clear to this Court that the mistake by the Magistrate that caused the delay was a neutral reason.<sup>4</sup> As such, it should be weighed more lightly than a deliberate intent to harm the accused's defense. Thus, this Court concludes the reason for the delay carries little weight in favor of Defendant.

### **B. Length of the Delay**

The nature and complexity of the case is import in determining the length of delay that can be tolerated. *See State v. Lopez*, 144 Idaho 349, 160 P.3d 1284 (Ct. App. 2007).

In this case Defendant was charged with driving under the influence, possession of marijuana, and possession of drug paraphernalia. Those charges, individually or collectively, cannot be characterized as complex. All of the charges stemmed from circumstances alleged to have taken place on the evening of June 26, 2010. Thus, the nature of the case does not provide any justification for a delay.

Defendant's First Appearance occurred on June 28, 2010. The Magistrate scheduled trial for January 14, 2011. Consequently, Defendant's speedy trial right was delayed approximately two and a half weeks.

In this Court's view, the delay, although not justified by the nature of the case, was insignificant due to its short duration of less than three weeks.

### **C. Defendant's assertion of his speedy trial rights**

The Defendant asserted his speedy trial rights on July 9, 2010, and August 13, 2010.

The State argues that the Defendant somehow waived his right to a trial within six months of June 28, 2010 because he never requested an earlier trial date than the one scheduled for January 14, 2011. However, the repeated early request of his right discloses that the

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<sup>4</sup> At oral argument, this Court inquired of the parties on the issue of whether mistake was the fault of the software or human error. This Court finds, in either case, it remains a neutral reason for the delay.

Defendant desired a speedy trial. *See State v. Holtslander*, 102 Idaho 306, 312, 629 P.3d 702 (708 (1981)).

Here, Defendant's early assertion of his speedy trial right weighs in his favor.

#### **D. Prejudice Caused by the Delay**

The Idaho Court of Appeals recently stated,

Prejudice is to be assessed in light of the interests that the right to a speedy trial is designed to protect: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired. *Barker*, 407 U.S. at 532, 92 S.Ct. at 2193, 33 L.Ed.2d at 118; *Young*, 136 Idaho at 118, 29 P.3d at 954; *Lopez*, 144 Idaho at 354-55, 160 P.3d at 1289-90. The third of these is the most significant because a hindrance to adequate preparation of the defense "skews the fairness of the entire system." *Barker*, 407 U.S. at 532, 92 S.Ct. at 2193, 33 L.Ed.2d at 118; *Lopez*, 144 Idaho at 355, 160 P.3d at 1290. *See also State v. Hernandez*, 133 Idaho 576, 583, 990 P.2d 742, 749 (Ct. App. 1999).

*State v. Moore*, 148 Idaho 887, 903, 231 P.23d 532, 548 (Ct. App. 2010).

The State argues, "Jacobson never provided any evidence of any of the factors relating to prejudice, even at the hearing on the motion after this factor had been brought to his attention." Appellant's Brief at 9.

The Defendant was incarcerated for two days before the Magistrate entered an Order of Release from Custody. This Court recognizes that one facing criminal charges naturally experiences some amount of anxiety. However, the record contains no assertion by the Defendant regarding the extent or reason for any anxiety he experienced. Moreover, there is no evidence in the record that the delay impaired his defense in any way.

Under these circumstances, the Court cannot say that the Defendant was prejudiced as a result of the delay.

This Court is required to weigh and balance the four *Barker* factors to determine whether Defendant's right to a speedy trial was violated. *Barker*, 407 U.S. at 533, 92 S.Ct. at 2193, 33

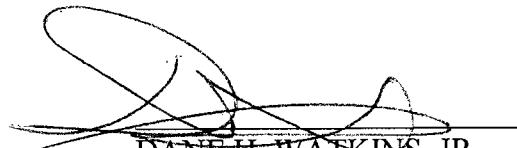
L.Ed. 2d at 118. None of these factors, standing alone, is either necessary or sufficient to establish a constitutional violation. *Id.*

This Court ascribes little weight to the cause of the delay. This Court believes the length of the delay was insignificant and did not prejudice Defendant in any significant way. Although Defendant, consistently and early in the proceedings, asserted his right to a speedy trial, this Court concludes that under the constitutional balancing test, a non-prejudicial delay of less than three weeks did not violate Defendant's right to a speedy trial.

#### IV. CONCLUSION

The Magistrate's Order should be reversed and the case should be remanded for further proceedings.

DATED this 9 day of July 2011.

  
DANE H. WATKINS, JR.  
District Judge

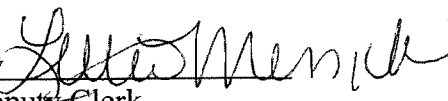
CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of July 2011, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Carl J. Withroe  
CITY OF STANLEY PROSECUTING ATTORNEY  
MOORE SMITH BUXTON & TURCKE, CHTD  
950 West Bannock Street, Suite 520  
Boise, ID 83702

Alexander P. McLaughlin  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
P.O. Box 1583  
Boise, ID 83701-1583

Clerk of the District Court  
Custer County, Idaho

By   
Deputy Clerk



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CUSTER.

STATE OF IDAHO, )  
 )  
Plaintiff/Appellant, )  
 )  
vs. )  
 )  
BRETT J JACOBSON, )  
 )  
Defendant/Respondent. )  
\_\_\_\_\_ )

Case No. CR-2010-316

**ORDER RE: APPEAL**


FILED IN CHAMBERS  
at Idaho Falls  
Bonneville County  
Honorable Judge Watkins  
Date July 6, 2011  
Time 4:30 pm  
Deputy Clerk SM

This cause having come before this Court pursuant to the State's Appeal filed February  
16, 2011, this Court being fully advised in the premises, and good cause appearing;

NOW, THEREFORE:

The Magistrate's Order of Dismissal is reversed and the case is remanded for further  
proceedings.

DATED this 6 day of July 2011.

  
DANE H. WATKINS, JR.  
District Judge

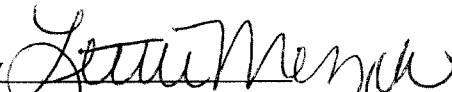
CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of July 2011, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Carl J. Withroe  
CITY OF STANLEY PROSECUTING ATTORNEY  
MOORE SMITH BUXTON & TURCKE, CHTD  
950 West Bannock Street, Suite 520  
Boise, ID 83702

Alexander P. McLaughlin  
DAVISON, COPPLE, COPPLE & COPPLE, LLP  
P.O. Box 1583  
Boise, ID 83701-1583

Clerk of the District Court  
Custer County, Idaho

By   
Deputy Clerk

CLERK OF DISTRICT COURT  
IDAHO  
CLERK OF DISTRICT COURT  
2011 JUL 11 PM 12:39

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,

Plaintiff,

vs.

BRETT J. JACOBSON,

Defendant.

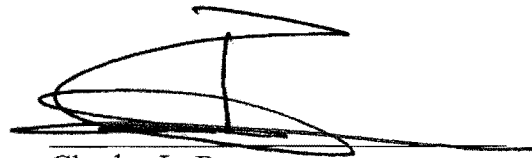
CASE NO. CR-2010-316

**ORDER REINSTATING CRIMINAL  
COMPLAINT AND NOTICE OF  
JURY TRIAL**

The District Court having reversed the dismissal of this matter on speedy trial issue, therefore:

IT IS HEREBY ORDERED that the Criminal Complaint is reinstated and the matter is set for Jury Trial on the 7<sup>th</sup> day of October, 2011 at 9:00 a.m.

Dated this 11<sup>th</sup> day of July, 2011.



Charles L. Roos  
Magistrate Judge

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on July 11, 2011 a true and correct copy of the foregoing Order of Dismissal was served by the method indicated below and addressed to each of the following:

City of Stanley Prosecutor                      ☒    US Mail

Alexander P. McLaughlin                      ☒    US Mail

*Laila Plummer*  
\_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

2011 JUL 11 PM 12:46

STATE OF IDAHO,  
Plaintiff,

Case No. CR-2010-0000316

-vs-

**PRE-TRIAL ORDER**

BRETT J JACOBSON,  
Defendant.

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TO: The above named parties and/or their Attorney of record.

PRE-TRIAL MOTIONS

IT IS HEREBY ORDERED that pre-trial motions must be filed with the Court and proper notice thereof given to the opposing party within twenty one (21) days of trial.

JURY INSTRUCTIONS

IT IS FURTHER ORDERED that requested jury instructions must be filed with the Court, and proper notice thereof given to opposing party, at least ten (10) days (excluding weekends and holidays) before trial.

PRE-TRIAL DISCOVERY

IT IS FURTHER ORDERED that all pre-trial discovery must be completed by the parties on or before three (3) weeks of trial.

CONTINUANCES

IT IS FURTHER ORDERED that no continuance will be granted on a jury trial unless preceded by a written motion or stipulation at least seven (7) days (excluding Saturdays, Sundays and legal holidays) prior to the trial date.

DATED this date, Monday, July 11, 2011



---

Magistrate Judge

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on 7/11/2011 a true and correct copy of the foregoing Pre-trial Order was served by the method indicated below and addressed to each of the following:

Paul J Fitzer Esq  
950 W. Bannock, Ste. 520  
Boise ID 83702

☒ US Mail

Alexander P McLaughlin Esq  
PO Box 2720  
Boise ID 83701

☒ US Mail

*Laila Plummer*  
Deputy Clerk

Filed at Custer County  
2:17 pm Aug 12 2011  
Clerk of the District Court

By \_\_\_\_\_

Thomas E. Dvorak (Idaho State Bar ID# 5043)  
Alexander P. McLaughlin (Idaho State Bar ID# 7977)  
GIVENS PURSLEY LLP  
601 West Bannock Street  
Post Office Box 2720  
Boise, Idaho 83701-2720  
Telephone: (208) 388-1200  
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[alexmccloughlin@givenspursley.com](mailto:alexmccloughlin@givenspursley.com)

Attorneys for Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO

Plaintiff/Appellant,

Vs.

BRETT J. JACOBSON,

Defendant/Respondent.

Case No. CR-2010-316

NOTICE OF APPEAL

Honorable Judge Watkins

Clerk's Record, IAR 27(d): \$100.00

TO: THE ABOVE-NAMED PLAINTIFF/RESPONDENT THE STATE OF IDAHO, AND ITS ATTORNEYS, CARL J. WITHROE, CITY OF STANLEY PROSECUTING ATTORNEY, MOORE SMITH BUXTON & TURCKE, Chtd., 950 West Bannock Street, Suite 520, Boise, Idaho 83702, AND THE CLERK OF THE ABOVE ENTITLED COURT, CLERK OF THE SUPREME COURT AND THE COURT REPORTERS:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Defendant/Respondent Brett J. Jacobson appeals against the above-named Plaintiff/Appellant State of Idaho to the Idaho Supreme Court from the Memorandum

Decision Re: Appeal, the Court's Order dated July 6, 2011, and the Court's Order Reinstating Criminal Complaint and Notice of Jury Trial, entered by the Honorable Dane H. Watkins, Jr., District Judge of the Seventh Judicial District.

2. Brett J. Jacobson has the right to appeal to the Idaho Supreme Court and the foregoing items are appealable pursuant to Rules 1-11 and, more specifically, Rule 11(c)(10), of the IDAHO APPELLATE RULES ("IAR").

3. A preliminary statement of issues on appeal which the Appellant intends to assert in the appeal is as follows: whether the District Court committed error in its analysis and application of I.C. § 19-3501 to the facts herein and thus, erred in reversing the Magistrate's Order of Dismissal.

4. Brett J. Jacobson requests preparation of the entire reporter's transcript for the following hearings:

a. Telephonic hearing held on January 7, 2011 before the Honorable Charles L. Roos;

b. Telephonic hearing held on June 15, 2011 before the Honorable Dane H. Watkins, Jr.

5. Brett J. Jacobson requests the standard record under IAR 28 and that the following documents be included as exhibits to the Clerk's Record:<sup>1</sup>

a. ROA Report;

b. Citations (filed 6-28-10);

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<sup>1</sup> Out of an abundance of caution, Appellant has designated all items which it would like put into the record. Most items will be repetitious to those already automatically designated under IAR 28.



- c. Affidavit in Support of Probable Cause (Filed 6-28-10);
- d. Notice of Suspension (Filed 6-28-10);
- e. Minute Entry (Filed 6-28-10);
- f. Minute Entry (Filed 6-28-10);
- g. Minute Entry (Filed 6-28-10);
- h. Order of Release From Custody (Filed 6-28-10);
- i. Notice of Appearance; Entry of Not Guilty Plea; Demand for Speedy Jury Trial; and Demand for Sworn Complaint (Filed 7-9-10);
- j. Motion for Extension of Time for Filing Pre-Trial Motions (Filed 7-9-10);
- k. Order Granting Motion for Extension of Time for Filing Pre-Trial Motions (Filed 7-9-10);
- l. Affidavit of Brett J. Jacobson (Filed 7-23-10);
- m. Request for Judicial Notice (Filed 7-23-10);
- n. Criminal Complaint (Filed 8-2-10);
- o. State of Idaho's Objection to the Affidavit of Brett J. Jacobson and Request for Judicial Notice (Filed 8-2-10)
- p. Reply to State of Idaho's Objection to the Affidavit of Brett J. Jacobson and Request for Judicial Notice (Filed 8-6-10);
- q. Acceptance of Service (Filed 8-13-10);
- r. Jury Pretrial Order (Filed 8-13-10):

- s. Notice of Appearance; Entry of Not Guilty Plea; Demand for Seedy Jury Trial;  
and Demand for Sworn Complaint (Filed 8-13-10);
- t. Motion to Suppress (Filed 8-23-10);
- u. Affidavit of Brett J. Jacobson in Support of Motion to Suppress (Filed 8-23-  
10);
- v. Memorandum in Support of Motion to Suppress (Filed 8-23-10);
- w. State of Idaho's Response to Defendant's Motion to Suppress and Objection  
to the Affidavit of Brett Jacobson in Support of Motion to Suppress (Filed 9-1-10);
- x. Second Motion to Suppress (Filed 9-7-10);
- y. Order Setting Aside Finding of Guilt (Filed 9-24-10);
- z. Court Minutes (Filed 10-4-10);
- aa. Order (Filed 10-4-10);
- bb. Motion to Dismiss (Filed 1-4-11);
- cc. Memorandum in Support of Motion to Dismiss (Filed 1-4-11);
- dd. Affidavit of Alexander P. McLaughlin in Support of Motion to Dismiss (Filed  
1-4-11);
- ee. Order of Dismissal (Filed 1-7-11);
- ff. Notice of Appeal (Filed 2-14-11);
- gg. Notice of Transcript Lodged (Filed 2-17-11);
- hh. Notice of Lodging of Clerk's Record (Filed 2-22-11);
- ii. Motion to Augment the Record (Filed 4-15-11);

- jj. Appellant's Brief (Filed 4-18-11);
- kk. Order Augmenting the Record on Appeal (Filed 4-19-11);
- ll. Respondent's Brief (Filed 4-27-11);
- mm. Appellant's Reply Brief (Filed 5-19-11);
- nn. Notice of Substitution of Counsel (Filed 5-31-11);
- oo. Motion to Appear Telephonically (Filed 6-6-11);
- pp. Order Granting Motion to Appear Telephonically (Filed 6-7-11);
- qq. Motion for Telephonic Hearing (Filed 6-9-11);
- rr. Order for Telephonic Hearing – Withroe (Filed 6-14-11);
- ss. Minute Entry (Filed 6-16-11);
- tt. Memorandum Decision Re: Appeal Filed in Bonneville Chambers (Filed 7-6-11);
- uu. Order – Filed in Bonneville Chambers (Filed 7-6-11);
- vv. Change Assigned Judge (Filed 7-11-10);
- ww. Order Reinstating Criminal Complaint and Notice of Jury Trial (Filed 7-11-11);
- xx. Hearing Scheduled (Jury Trial 10/07/2011 09:00 AM) (Filed 7-11-11); and
- yy. Jury Pretrial Order (Filed 7-11-11).

6. I certify that:

a. A copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the addresses set out below:

Laila Plummer  
Court Reporter to Honorable Charles L. Roos  
Custer County Courthouse  
P.O. Box 385  
Challis, Idaho 83226

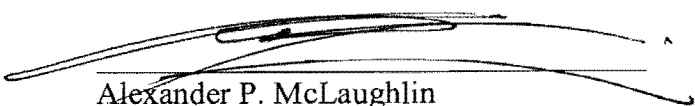
Karen Konvalinka  
Court Reporter to Honorable Dane Watkins, Jr.  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, Idaho 83402

- b. The estimated fee for preparation of the Clerk's Record has been paid;
- c. There is no appellate filing fee in a criminal case; and
- d. Service has been made upon all parties required to be served pursuant to IAR

20, and the Attorney General of Idaho pursuant to I.C. § 67-1401(1).

Respectfully submitted this 11<sup>th</sup> day of August, 2011.

GIVENS PURSLEY LLP



Alexander P. McLaughlin  
Attorney for Appellant

CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on the 11<sup>th</sup> day of August 2011, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke, Chtd  
950 West Bannock Street, Suite 520  
Boise, Idaho 83702  
*Counsel For State of Idaho*

☒ U.S. Mail   ☐ Hand Delivered   ☐ Overnight Mail   ☐ Facsimile

Clerk of the Supreme Court  
P.O. Box 83720  
Boise, Idaho 83720-0101

☒ U.S. Mail   ☐ Hand Delivered   ☐ Overnight Mail   ☐ Facsimile

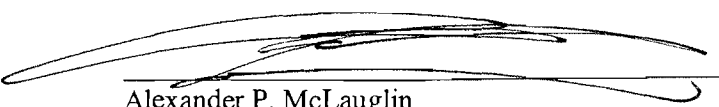
Lawrence G. Wasden  
Idaho Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010

☒ U.S. Mail   ☐ Hand Delivered   ☐ Overnight Mail   ☐ Facsimile

With one copy via United States Mail to:

Laila Plummer  
Court Reporter to Honorable Charles L. Roos  
Custer County Courthouse  
P.O. Box 385  
Challis, Idaho 83226

Karen Konvalinka  
Court Reporter to Honorable Dane Watkins, Jr.  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, Idaho 83402

  
Alexander P. McLaughlin

DISTRICT COURT  
CUSTER COUNTY  
IDAHO

2011 AUG 29 PM 12:56

Thomas E. Dvorak (Idaho State Bar ID# 5043)  
Alexander P. McLaughlin (Idaho State Bar ID# 7977)  
GIVENS PURSLEY LLP  
601 West Bannock Street  
Post Office Box 2720  
Boise, Idaho 83701-2720  
Telephone: (208) 388-1200  
Facsimile: (208) 388-1300  
[alexmcLaughlin@givenspursley.com](mailto:alexmcLaughlin@givenspursley.com)

Attorneys for Brett J. Jacobson

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO

Plaintiff/Appellant,

Vs.

BRETT J. JACOBSON,

Defendant/Respondent.

Case No. CR-2010-316

AMENDED NOTICE OF APPEAL

Honorable Judge Watkins

Clerk's Record, IAR 27(d): \$100.00

TO: THE ABOVE-NAMED PLAINTIFF/RESPONDENT THE STATE OF IDAHO, AND ITS ATTORNEYS, CARL J. WITHROE, CITY OF STANLEY PROSECUTING ATTORNEY, MOORE SMITH BUXTON & TURCKE, Chtd., 950 West Bannock Street, Suite 520, Boise, Idaho 83702, AND THE CLERK OF THE ABOVE ENTITLED COURT, CLERK OF THE SUPREME COURT AND THE COURT REPORTERS:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Defendant/Respondent Brett J. Jacobson appeals against the above-named Plaintiff/Appellant State of Idaho to the Idaho Supreme Court from the Memorandum

Decision Re: Appeal, the Court's Order dated July 6, 2011, and the Court's Order Reinstating Criminal Complaint and Notice of Jury Trial, entered by the Honorable Dane H. Watkins, Jr., District Judge of the Seventh Judicial District.

2. Brett J. Jacobson has the right to appeal to the Idaho Supreme Court and the foregoing items are appealable pursuant to Rules 1-11 and, more specifically, Rule 11(c)(10), of the IDAHO APPELLATE RULES ("IAR").

3. A preliminary statement of issues on appeal which the Appellant intends to assert in the appeal is as follows: whether the District Court committed error in its analysis and application of I.C. § 19-3501 to the facts herein and thus, erred in reversing the Magistrate's Order of Dismissal.

4. Brett J. Jacobson requests preparation of the entire reporter's transcript for the following hearings:

a. Telephonic hearing held on January 7, 2011 before the Honorable Charles L. Roos;

b. Telephonic hearing held on June 15, 2011 before the Honorable Dane H. Watkins, Jr.

5. Brett J. Jacobson requests the standard record under IAR 28 and that the following documents be included as exhibits to the Clerk's Record:<sup>1</sup>

a. ROA Report;

b. Citations (filed 6-28-10);

---

<sup>1</sup> Out of an abundance of caution, Appellant has designated all items which it would like put into the record. Most items will be repetitious to those already automatically designated under IAR 28.

- c. Affidavit in Support of Probable Cause (Filed 6-28-10);
- d. Notice of Suspension (Filed 6-28-10);
- e. Minute Entry (Filed 6-28-10);
- f. Minute Entry (Filed 6-28-10);
- g. Minute Entry (Filed 6-28-10);
- h. Order of Release From Custody (Filed 6-28-10);
- i. Notice of Appearance; Entry of Not Guilty Plea; Demand for Speedy Jury Trial; and Demand for Sworn Complaint (Filed 7-9-10);
- j. Motion for Extension of Time for Filing Pre-Trial Motions (Filed 7-9-10);
- k. Order Granting Motion for Extension of Time for Filing Pre-Trial Motions (Filed 7-9-10);
- l. Affidavit of Brett J. Jacobson (Filed 7-23-10);
- m. Request for Judicial Notice (Filed 7-23-10);
- n. Criminal Complaint (Filed 8-2-10);
- o. State of Idaho's Objection to the Affidavit of Brett J. Jacobson and Request for Judicial Notice (Filed 8-2-10)
- p. Reply to State of Idaho's Objection to the Affidavit of Brett J. Jacobson and Request for Judicial Notice (Filed 8-6-10);
- q. Acceptance of Service (Filed 8-13-10);
- r. Jury Pretrial Order (Filed 8-13-10):



- s. Notice of Appearance; Entry of Not Guilty Plea; Demand for Seedy Jury Trial;  
and Demand for Sworn Complaint (Filed 8-13-10);
- t. Motion to Suppress (Filed 8-23-10);
- u. Affidavit of Brett J. Jacobson in Support of Motion to Suppress (Filed 8-23-  
10);
- v. Memorandum in Support of Motion to Suppress (Filed 8-23-10);
- w. State of Idaho's Response to Defendant's Motion to Suppress and Objection  
to the Affidavit of Brett Jacobson in Support of Motion to Suppress (Filed 9-1-10);
- x. Second Motion to Suppress (Filed 9-7-10);
- y. Order Setting Aside Finding of Guilt (Filed 9-24-10);
- z. Court Minutes (Filed 10-4-10);
- aa. Order (Filed 10-4-10);
- bb. Motion to Dismiss (Filed 1-4-11);
- cc. Memorandum in Support of Motion to Dismiss (Filed 1-4-11);
- dd. Affidavit of Alexander P. McLaughlin in Support of Motion to Dismiss (Filed  
1-4-11);
- ee. Order of Dismissal (Filed 1-7-11);
- ff. Notice of Appeal (Filed 2-14-11);
- gg. Notice of Transcript Lodged (Filed 2-17-11);
- hh. Notice of Lodging of Clerk's Record (Filed 2-22-11);
- ii. Motion to Augment the Record (Filed 4-15-11);

- jj. Appellant's Brief (Filed 4-18-11);
- kk. Order Augmenting the Record on Appeal (Filed 4-19-11);
- ll. Respondent's Brief (Filed 4-27-11);
- mm. Appellant's Reply Brief (Filed 5-19-11);
- nn. Notice of Substitution of Counsel (Filed 5-31-11);
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- pp. Order Granting Motion to Appear Telephonically (Filed 6-7-11);
- qq. Motion for Telephonic Hearing (Filed 6-9-11);
- rr. Order for Telephonic Hearing – Withroe (Filed 6-14-11);
- ss. Minute Entry (Filed 6-16-11);
- tt. Memorandum Decision Re: Appeal Filed in Bonneville Chambers (Filed 7-6-11);
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- xx. Hearing Scheduled (Jury Trial 10/07/2011 09:00 AM) (Filed 7-11-11); and
- yy. Jury Pretrial Order (Filed 7-11-11).

6. I certify that:

a. A copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the addresses set out below:

Laila Plummer  
Court Reporter to Honorable Charles L. Roos  
Custer County Courthouse  
P.O. Box 385  
Challis, Idaho 83226

Sandra Beebe  
Court Reporter to Honorable Dane Watkins, Jr.  
501 N. Maple  
P.O. Box 658  
Blackfoot, Idaho 83221

- b. The estimated fee for preparation of the Clerk's Record has been paid;
- c. There is no appellate filing fee in a criminal case; and
- d. Service has been made upon all parties required to be served pursuant to IAR

20, and the Attorney General of Idaho pursuant to I.C. § 67-1401(1).

Respectfully submitted this 26<sup>th</sup> day of August, 2011.

GIVENS PURSLEY LLP



Alexander P. McLaughlin  
Attorney for Appellant

CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on the 26<sup>th</sup> day of August 2011, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

Carl J. Withroe  
City of Stanley Prosecuting Attorney  
Moore Smith Buxton & Turcke, Chtd  
950 West Bannock Street, Suite 520  
Boise, Idaho 83702  
*Counsel For State of Idaho*

✓ U.S. Mail    ☐ Hand Delivered    ☐ Overnight Mail    ☐ Facsimile

Clerk of the Supreme Court  
P.O. Box 83720  
Boise, Idaho 83720-0101

✓ U.S. Mail    ☐ Hand Delivered    ☐ Overnight Mail    ☐ Facsimile

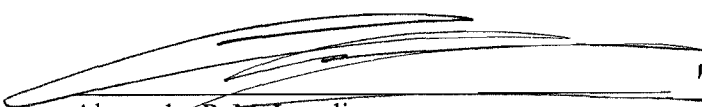
Lawrence G. Wasden  
Idaho Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010

✓ U.S. Mail    ☐ Hand Delivered    ☐ Overnight Mail    ☐ Facsimile

With one copy via United States Mail to:

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Custer County Courthouse  
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Challis, Idaho 83226

Sandra Beebe  
Court Reporter to Honorable Dane Watkins, Jr.  
501 N. Maple  
P.O. Box 658  
Blackfoot, Idaho 83221

  
Alexander P. McLaughlin

2011 AUG 30 AM 10:57

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,

Plaintiff,

vs.

BRETT J. JACOBSON,

Defendant.

CASE NO. CR-2010-316

**ORDER STAYING FURTHER  
PROCEEDINGS AND  
VACATING JURY TRIAL**

The above referenced matter was appealed to the Idaho Supreme Court on August 12<sup>th</sup>, 2011. The jury trial that was set for October 7<sup>th</sup>, 2011, is hereby vacated until the appeal can be heard.

Dated this 30<sup>th</sup> day of August, 2011.



Charles L. Roos  
Magistrate Judge

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on August 30, 2011 a true and correct copy of the foregoing Order was served by the method indicated below and addressed to each of the following:

City of Stanley Prosecutor	<input checked="" type="checkbox"/> Facsimile
Alexander P. McLaughlin	<input checked="" type="checkbox"/> Facsimile
Idaho Supreme Court Court of Appeals	<input checked="" type="checkbox"/> US Mail

*Laila Plummer*  
Deputy Clerk

2011 SEP 15 PM 3:10

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO

Plaintiff-Respondent,

vs

BRETT J. JACOBSON

Defendant-Appellant.

Supreme Court No. 39094

County Case No. CR-2010-316

CLERK'S CERTIFICATE  
OF APPEAL

**Appeal from:** Seventh Judicial District, Custer County. Honorable Dane Watkins Jr. presiding.

**Case number from court:** CR-2010-316

**Order or judgment appealed from:** Memorandum Decision RE: Appeal and Order RE: Appeal

**Attorney for Plaintiff/Respondent:** Lawrence G. Wasden, PO Box 83720, Boise, Idaho 83720-0010

**Attorney for Defendants/Appellant:** Alexander P. McLaughlin, Givens Pursley, LLP, PO Box 2720, Boise, Idaho 83701-2720.

**Appealed by:** Brett J. Jacobson

**Appealed against:** State of Idaho

**Notice of Appeal Filed:** August 12<sup>th</sup>, 2011

**Appellate fee paid:** No Fee for Criminal Appeals

**Estimated cost of clerk's record:** \$ 100.00

CLERK'S CERTIFICATE OF APPEAL

1

**Was District Court Reporter's Transcript requested? Yes**

**If so, name of Reporter:** Sandra Beebe, District Court, Seventh Judicial District, PO Box 658,  
501 North Maple #310, Blackfoot ID 83221.

Dated September 15<sup>th</sup>, 2011

BARBARA C. TIERNEY, Clerk

*Laila Plummer*

Laila Plummer, Deputy



2011 SEP 21 PM 2:25

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO

Plaintiff – Respondent,

**VS.**

BRETT J. JACOBSON

Defendant – Appellant.

**Supreme Court No. 39094**

Custer County No. CR-2010-316

CLERK'S CERTIFICATE OF EXHIBIT'S

## DOCUMENTS PLACED AS EXHIBITS

1. Magistrate transcript of the Motion to Dismiss hearing on January 7<sup>th</sup>, 2011.

**CLERK'S CERTIFICATE OF EXHIBIT'S**

Exhibit 1

Lodged  
with the Distr  
Court of Custer  
County State  
Idaho on 2/1  
at 2:01 pm  
Laila Plummer

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	CASE NO. CR-2010-316
	)	
-VS-	)	
	)	MOTION TO DISMISS
	)	
BRETT J JACOBSON,	)	
	)	
Defendant/Respondent	)	
_____	)	

BE IT REMEMBERED that on the 7<sup>th</sup> day of January, 2011, this cause came on for hearing  
before The Honorable Charles L. Roos, Magistrate, in the Custer County Courthouse, Challis, Idaho.

APPEARANCES:

For the Plaintiff/Appellant:

Carl J. Withroe  
Moore Smith Buxton & Turcke, Chtd  
950 West Bannock Street, Suite 520  
Boise, Id 83702

For the Defendant/Respondent:

Alexander P. McLaughlin  
Davison, Copple, Copple & Copple, LLP  
PO Box 1583  
Boise, Id 83702

Transcribed by:

Laila Plummer, Deputy Clerk

1  
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5  
6 IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
7 STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER  
8

9 - ∞ -

10  
11 STATE OF IDAHO, )  
12 )  
13 Plaintiff, )  
14 )

15 vs. )

16 )  
17 BRETT J JACOBSON, )  
18 )  
19 Defendant. )  
20 )  
21

Case No. CR-2010-316

22  
23 MOTION TO DISMISS  
24

25 Friday, January 7<sup>th</sup>, 2011  
26

27 Challis, Custer County, Idaho  
28

29 BEFORE THE HONORABLE CHARLES L. ROOS  
30  
31

32  
33 For the State:

Carl J. Withroe, Esq.  
Stanley City Prosecutor  
950 West Bannock St, Ste 520  
Boise, ID 83702

34  
35  
36  
37  
38 For the Defendant:

Alexander P. McLaughlin, Esq.  
P.O. Box 1583  
Boise, ID 83702  
39  
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43  
44  
45

1 PROCEEDINGS

2 - ∞ -

3 THE COURT: Alright, go on the record on this the 7<sup>th</sup> day of January of  
4 2011, Magistrate's Division District Court for Custer County and take up the matter of  
5 State of Idaho versus Brett Jacobson, Case No. CR-2010-316.

6 Recognize for the record that Mr. Withroe is present on behalf of the State  
7 and Mr. McLaughlin is present on behalf of the defendant, by, uh telephone conference  
8 call, and gentlemen, I thought we'd better get together on this, Mr. Laughlin had filed a  
9 Motion to Dismiss for lack of speedy trial. Uh, it's set for Jury Trial, um, a week from  
10 today, and I thought that we ought to hear this now since I'm going to be on vacation next  
11 week, uh, until Thursday afternoon. Um, Mr. Withroe do you have anything in response to  
12 this?

13 MR. WITHROE: Uh, I do your Honor; I'm actually working on a written  
14 response. Um, uh, as, as we speak, um, a couple responses. No. 1, I believe that the,  
15 (indiscernible - snuffle) uh court should, uh, deny the motion because the, the motion is  
16 untimely pursuant to the court's pretrial order. Uh, No. 2, uh, I believe that the state of the  
17 record, uh, demonstrates that uh, if there is any, uh, extension beyond the six month period,  
18 it is justified, uh, based on the activities that have occurred, um, uh, from the time of the  
19 first entry of the not guilty plea, uh, and I also believe that uh, Mr. Jacobson cannot  
20 demonstrate prejudice, which is a required element of, uh, his motion. Uh, and finally, I  
21 believe that, um, we're not past the six month period because, uh, I believe that the six  
22 month period should start to run as of the date of the last entry of uh, plea, which is not  
23 more than six months ago at this point.

24 THE COURT: Alright, very well. Mr. McLaughlin?

25 MR. MCLAUGHLIN: Uh, well, your Honor, I mean, uh, I guess, uh, my  
26 position is just, uh, that the prejudice suffered is, uh, is, is, um, a statutory and  
27 constitutional right of speedy trial, uh, we demanded it twice, or we demanded it, uh, we  
28 uh pled not guilty, um, you know, no matter what time frame you use, um, uh, it, it has run.  
29 Uh, moreover, uh, there was some issue with regard to entering initial not guilty pleas, but,  
30 uh, I think the case law, and more specifically, uh, I believe it's criminal rule 3.1, provided  
31 that an, an Idaho uniform citation is the date of charge, we pled not guilty, he got counsel,

1 we pled not guilty again. Um, the, the statute's pretty darn clear on this issue. Um, and  
2 the time's run.

3 THE COURT: K; anything further Mr. Withroe?

4 MR. WITHROE: Um, no your Honor, I guess, I just uh, I, one of the things  
5 that Mr. McLaughlin omitted from his, um, from his paperwork in support of this, I  
6 believe, and, and since I was, um, I'd, have to look, there was also, there was a, uh, he said  
7 that the six month time has run, no matter what the date of the entry of not guilty is, but I  
8 believe that he in his, uh, memorandum in support and his affidavit omitted a, um, an  
9 August, uh, entry of plea, which of course would bring us within six months.

10 THE COURT: No, I, I understand that, and I have review, I have reviewed  
11 the file gentlemen, and I'm going to put this issue squarely on the, on the court. The  
12 original citation, uh, alleged these violations occurred on June 26th of 2010, and the  
13 defendant was arrested. He then had his initial arraignment on these three counts on 6/28  
14 of 2010, and entered pleas of not guilty. That would start the running of the six months in  
15 accordance with the statute and the case law as I've reviewed it. On 7/9 of 2010, Mr.  
16 McLaughlin appears in writing, enters a plea of not guilty, I don't think that supersedes the  
17 original not guilty plea according to law. Then, a criminal complaint, replacing the  
18 citations was filed by Mr. Withroe, with the court on August 2<sup>nd</sup>, of 2010, and here's where  
19 I'm going to lay it right on the court; what happened there, that date got entered into  
20 ISTARS, and ISTARS automatically kicks up, which is, I think you gentlemen know what  
21 ISTARS are, don't you, is don't you?

22 MR. WITHROE: Yes, your Honor.

23 MR. MCLAUGHLIN: Yes, your Honor.

24 THE COURT: OK. ISTARS then puts up on the screen, a speedy trial date  
25 to comply with the six month rule. Unfortunately, that speedy trial date came up based  
26 upon the August 2<sup>nd</sup>, 2010 formal complaint, as opposed to the date, uh, on the citations in  
27 the initial appearance. Thereafter, on August 13<sup>th</sup>, of 2010, defense counsel accepts  
28 service, um, files a, uh, another notice, uh, of appearance, not guilty plea on that August  
29 13<sup>th</sup>, 2010 date also. On August 13<sup>th</sup> of 2010, we set trial for, uh 1/14 of 2011. That's  
30 clearly, and I don't, it, the filing of a formal criminal complaint does not supersede a date  
31 and time, uh, to commence the counting of the six months. I do not blame this at all on

1 Mr. Withroe, uh, frankly, it was just a matter of how it got entered in ISTARs, and then, it  
2 was set what we thought, was within the six month time frame. Unfortunately, it is not, the  
3 time frame for six months from June, uh, has elapsed as of December of 2010. So, I feel  
4 compelled, and I realize that this was not timely filed motion, but I believe it goes to the  
5 jurisdiction of the court and the court is obligated to hear it, to not hear it, I think would be  
6 reversible error and to deny it on that ground, since it's jurisdictional. Therefore, I'm  
7 gonna save everybody a trip to beautiful downtown Challis Idaho on the 14<sup>th</sup> day of  
8 January, 2011, and I'm going to enter the Order of Dismissal as provided by Mr. Laughlin,  
9 McLaughlin, uh, based upon the fact that the trial was not held within, uh, the six month  
10 period of time. And gentlemen, I'm gonna apologize, as, uh, I'm sure Mr. McLaughlin,  
11 doesn't matter if I apologize or not, but I, I feel compelled to apologize to the State, and I  
12 will put, as I am doing now, placing on the record, that this is at no fault of the State of  
13 Idaho or Mr. Withroe's office with regards to this matter, it was an internal matter with the  
14 court, uh, they call it the human race, not the perfect race, so. (indiscernible - laugh)  
15 Anything further to come before the court at this time gentlemen?

16 MR. MCLAUGHLIN: Uh, no your Honor.

17 MR. WITHROE: Uh, not from the State your Honor, thank you.

18 THE COURT: OK, thank you, and that'll save ya'll a trip, good day.

19 MR. MCLAUGHLIN: Thanks Judge.

20 THE COURT: Yes.

21 (The Motion to Dismiss hearing concluded)

22 \* \* \* \* \*

23

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27

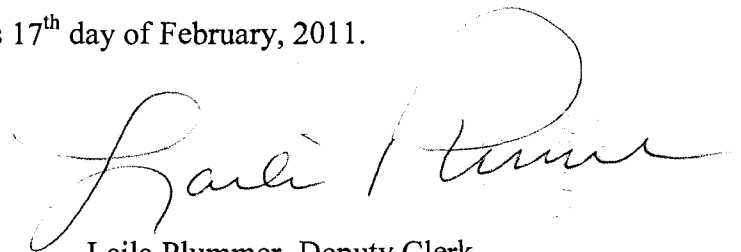
28

29

30

The undersigned does hereby certify that she correctly and accurately transcribed and typed the above transcript from the recording of the MOTION TO DISMISS recorded on January 7<sup>th</sup>, 2011, STATE OF IDAHO VS. BRETT J. JACOBSON, Case No. CR-2010-316, in and for the County of Custer.

Dated and certified this 17<sup>th</sup> day of February, 2011.



Laila Plummer, Deputy Clerk

DISTRICT COURT  
CUSTER COUNTY  
IDAHO  
S. L. PLUMMER

2011 OCT 12 PM 1:41

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

STATE OF IDAHO )  
 )  
Plaintiff-Respondent, )  
 )  
vs. )  
 )  
BRETT J. JACOBSON )  
 )  
Defendant-Appellant. )

**Supreme Court No. 39094**

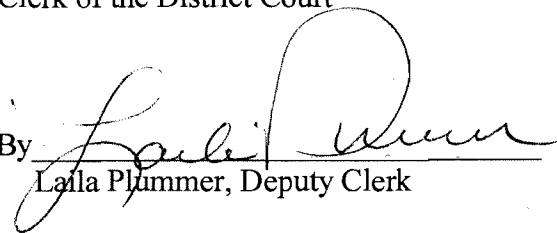
Custer County No. CR-2010-316

Notice is hereby given that on October 12<sup>th</sup>, 2011; the Clerk's Record and Reporter's Transcript in the above referenced appeal were lodged with the District Court Clerk.

The Parties shall have twenty-one (21) days from the date of service of the appeal record to file any objections, together with a Notice of Hearing, with the District Court. If no objection is filed, the record will be deemed settled and will be filed with the Supreme Court.

BARBARA C. TIERNEY  
Clerk of the District Court

By

  
Laila Plummer, Deputy Clerk

cc: Clerk of the Court  
Idaho Supreme Court  
P.O. Box 83720  
Boise, ID 83720-0101